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Environmental Protection
Land Resources & Use • State Lands
Agriculture • Livestock

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75-1-101. Short title. Parts 1 through 3 may be cited as the "Montana Environmental Policy Act".

History: En. Sec. 1, Ch. 238, L. 1971; R.C.M. 1947, 69-6501.

Cross-References

State policy of consistency and continuity in adoption and application of environmental rules, 90-1-101.

75-1-102. Intent — purpose or procedural policy. (1) The Montana Environmental Policy Act is procedural, and it is the legislature's intent that the requirements of parts 1 through 3 of this chapter provide for the adequate review of proposed actions in order to ensure that:

(a) an assessment of environmental attributes is conducted and made available for the legislature to fully review in order to determine the appropriateness of potential and existing regulations; and

(b) the public is informed of the anticipated impacts in Montana of proposed actions.

(2) The purpose of parts 1 through 3 of this chapter is to declare a state policy that provides for an adequate assessment of the relationship between humans and their environment, protects the right to use and enjoy private property free of undue government regulation, discloses proposed actions to avoid, minimize, or mitigate environmental impacts in accordance with existing regulations, stimulates the health and welfare of humans, enriches the understanding of the ecological systems and natural resources important to the state, and establishes an environmental quality council.

History: En. Sec. 2, Ch. 238, L. 1971; R.C.M. 1947, 69-6502; amd. Sec. 1, Ch. 352, L. 1995; amd. Sec. 5, Ch. 361, L. 2003; amd. Sec. 1, Ch. 396, L. 2011; amd. Sec. 35, Ch. 55, L. 2015; amd. Sec. 1, Ch. 246, L. 2025; amd. Sec. 4, Ch. 248, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 1, Ch. 246, L. 2025. Amendment effective May 1, 2025.

See 2025 Session Law for amendment made by sec. 4, Ch. 248, L. 2025. Amendment effective May 1, 2025.

Applicability: Section 9, Ch. 246, L. 2025, provided: "[This act] applies to all decisions pending but not decided by a court and cases filed on or after [the effective date of this act]." Effective May 1, 2025.

Cross-References

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.
Duty to maintain clean and healthful environment, Art. IX, sec. 1, Mont. Const.
Department of Public Service Regulation, 2-15-2601.

75-1-103. Repealed. Sec. 10, Ch. 248, L. 2025.

History: **En. Sec. 3, Ch. 238, L. 1971; R.C.M. 1947, 69-6503; amd. Sec. 2, Ch. 352, L. 1995; amd. Sec. 6, Ch. 361, L. 2003.**

75-1-104. Specific statutory obligations unimpaired. Section 75-1-201 does not affect the specific statutory obligations of any agency of the state to:

(1) comply with criteria or standards of environmental quality established in Montana law; or

(2) coordinate or consult with any local government, other state agency, or federal agency.

History: **En. Sec. 6, Ch. 238, L. 1971; R.C.M. 1947, 69-6506; amd. Sec. 1, Ch. 131, L. 2003; amd. Sec. 5, Ch. 248, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 5, Ch. 248, L. 2025. Amendment effective May 1, 2025.

75-1-105. Repealed. Sec. 10, Ch. 248, L. 2025.

History: **En. Sec. 7, Ch. 238, L. 1971; R.C.M. 1947, 69-6507.**

75-1-106. Private property protection — ongoing programs of state government. Nothing in this chapter expands or diminishes private property protection afforded in the U.S. or Montana constitutions.

History: **En. Sec. 4, Ch. 352, L. 1995; amd. Sec. 6, Ch. 248, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 6, Ch. 248, L. 2025. Amendment effective May 1, 2025.

75-1-107. Repealed. Sec. 10, Ch. 248, L. 2025.

History: **En. Sec. 2, Ch. 361, L. 2003.**

75-1-108. Repealed. Sec. 10, Ch. 248, L. 2025.

History: **En. Sec. 37, Ch. 361, L. 2003; amd. Sec. 26, Ch. 535, L. 2021.**

75-1-109. Policy — intent — purpose of environmental analysis. (1) (a) The purpose of requiring an environmental assessment or an environmental impact statement under part 2 of this chapter is to assist the legislature in determining whether environmental regulations are adequate to address impacts to Montana's environment and to inform the public and public officials of potential impacts resulting from a proposed action made by a state agency.

(b) It is not the purpose of parts 1 through 3 of this chapter to provide additional regulatory authority to a state agency.

(2) (a) The policies and goals set forth in parts 1 through 3 of this chapter are intended to provide a public forum in which to analyze and disclose potential significant impacts on Montana's environment from proposed actions.

(b) Parts 1 through 3 of this chapter require a balanced view of competing social, economic, and environmental goals and potential impacts in order to promote the overall health, safety, and welfare of Montanans.

(3) (a) An agency may not withhold, deny, or impose conditions on any permit or other authority to act based on parts 1 through 3 of this chapter.

(b) Nothing in this subsection (3) may prevent a project sponsor and an agency from mutually developing measures that may, at the request of a project sponsor, be incorporated into a permit or other authority to act.

(c) Parts 1 through 3 of this chapter do not confer authority to an agency that is a project sponsor to modify a proposed project or action.

History: **En. Sec. 1, Ch. 248, L. 2025.**

Compiler's Comments

Effective Date: Section 13, Ch. 248, L. 2025, provided: "[This act] is effective on passage and approval." Approved May 1, 2025.

75-1-110. Environmental rehabilitation and response account. (1) There is an environmental rehabilitation and response account in the state special revenue fund provided for in 17-2-102.

(2) There must be deposited in the account:

(a) fine and penalty money received pursuant to 75-10-1223, 82-4-311, and 82-4-424 and other funds or contributions designated for deposit to the account;

(b) reimbursements received pursuant to 75-10-1403;

(c) unclaimed or excess reclamation bond money received pursuant to 82-4-241, 82-4-311, and 82-4-424; and

(d) interest earned on the account.

(3) Money in the account is available to the department of environmental quality by appropriation and must be used to pay for:

(a) reclamation and revegetation of land affected by mining activities, research pertaining to the reclamation and revegetation of land, and the rehabilitation of water affected by mining activities;

(b) reclamation and revegetation of unreclaimed mine lands for which the department may not require reclamation by, or obtain costs of reclamation from, a legally responsible party;

(c) remediation of sites containing hazardous wastes as defined in 75-10-403, hazardous or deleterious substances as defined in 75-10-701, or solid waste as defined in 75-10-203; or

(d) response to an imminent threat of substantial harm to the environment, to public health, or to public safety for which no funding or insufficient funding is available pursuant to 75-1-1101.

(4) Any unspent or unencumbered money in the account at the end of a fiscal year must remain in the account until spent or appropriated by the legislature.

History: En. Sec. 1, Ch. 338, L. 2001; amd. Sec. 98, Ch. 2, L. 2009; amd. Sec. 1, Ch. 107, L. 2009; amd. Sec. 8, Ch. 200, L. 2009.

75-1-111. Constitutionality — venue. (1) In an action filed in district court invoking the court's original jurisdiction to challenge the constitutionality of a licensing or permitting decision made pursuant to Titles 75 or 82 or activities taken pursuant to a license or permit issued under Titles 75 or 82, the plaintiff shall first establish the unconstitutionality of the underlying statute.

(2) A proceeding in district court to challenge an action taken pursuant to parts 1 through 3, 10, and 11 of this chapter must be held in the county where the activity subject to the proceeding is proposed to occur or will occur.

History: En. Sec. 2, Ch. 248, L. 2025.

Compiler's Comments

Effective Date: Section 13, Ch. 248, L. 2025, provided: "[This act] is effective on passage and approval." Approved May 1, 2025.

75-1-112. Exemption from environmental review. The department is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when reviewing water or sewer system plans or specifications under this part.

History: En. Sec. 1, Ch. 377, L. 2025.

Compiler's Comments

Effective Date: This section is effective October 1, 2025.

2025 Codification Change: Section 5, Ch. 377, L. 2025, provided that this section was to be codified as an integral part of Title 75, chapter 6. The Code Commissioner has codified this section in Title 75, chapter 1, to more closely reflect the subject matter.

Part 2
Environmental Impact Statements

75-1-201. General directions — environmental impact statements. (1) The legislature authorizes and directs that, to the fullest extent possible:

(a) under this part, all agencies of the state, except the legislature and except as provided in subsection (3), shall:

(i) use a systematic, interdisciplinary approach that will ensure:

(A) the integrated use of the natural and social sciences and the environmental design arts in planning and assessing a state-sponsored project that may have an impact on Montana's environment by projects in Montana; and

(B) that in any environmental review that is not subject to subsection (1)(a)(iv), when an agency considers alternatives, the alternative analysis must be in compliance with the provisions of subsections (1)(a)(iv)(C)(I) and (1)(a)(iv)(C)(II) and, if requested by the project sponsor or if determined by the agency to be necessary, subsection (1)(a)(iv)(C)(III);

(ii) identify and develop methods and procedures that ensure that presently unquantified environmental amenities may be given appropriate consideration and assessment for state-sponsored projects;

(iii) identify and develop methods and procedures that ensure that state government actions that may impact Montana's environment are evaluated for regulatory restrictions on private property, as provided in subsection (1)(a)(iv)(D);

(iv) include in each recommendation or report on proposals for projects, programs, and other major actions of state government significantly affecting the quality of Montana's environment a detailed statement on:

(A) the proximate environmental impacts of the proposed action;

(B) any proximate adverse effects on Montana's environment that cannot be avoided if the proposed action is implemented;

(C) alternatives to the proposed action. An analysis of any alternative included in the environmental review must comply with the following criteria:

(I) any alternative proposed must be reasonable, in that the alternative must be achievable under current technology and the alternative must be economically feasible as determined solely by the economic viability for similar projects having similar conditions and physical locations and determined without regard to the economic strength of the specific project sponsor;

(II) the agency proposing the alternative shall consult with the project sponsor regarding any proposed alternative, and the agency shall give due weight and consideration to the project sponsor's comments regarding the proposed alternative;

(III) the agency shall complete a meaningful no-action alternative analysis. The no-action alternative analysis must include the projected beneficial and adverse environmental, social, and economic impact of the project's noncompletion.

(D) any regulatory impacts on private property rights, including whether alternatives that reduce, minimize, or eliminate the regulation of private property rights have been analyzed. The analysis in this subsection (1)(a)(iv)(D) need not be prepared if the proposed action does not involve the regulation of private property.

(E) any irreversible and irretrievable commitments of resources that would be involved in the proposed action if it is implemented;

(F) the customer fiscal impact analysis, if required by 69-2-216; and

(G) the details of the beneficial aspects of the proposed project, both short-term and long-term, and the economic advantages and disadvantages of the proposal;

(v) in accordance with the criteria set forth in subsection (1)(a)(iv)(C), study, develop, and describe appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources. If the alternatives analysis is conducted for a project that is not a state-sponsored project and alternatives are recommended, the project sponsor may volunteer to implement the alternative. The alternatives analysis or the resulting recommendations may not bind the project sponsor to take a recommended course of action.

(vi) make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of Montana's environment;

(vii) initiate and use ecological information in the planning and development of resource-oriented projects; and

(viii) assist the legislature and the environmental quality council established by 5-16-101;

(b) prior to making any detailed statement as provided in subsection (1)(a)(iv), the responsible state official shall consult with and request the comments of any state agency that has jurisdiction by law or special expertise with respect to any environmental impact involved in Montana and with any Montana local government, as defined in 7-12-1103, that may be directly impacted by the project. The responsible state official shall also consult with and request comments from any state agency in Montana with respect to any regulation of private property involved. Copies of the statement and the comments of the appropriate state, federal, and local agencies that are authorized to develop and enforce environmental standards must be made available to the governor, the environmental quality council, and the public and must accompany the proposal through the existing agency review processes.

(c) a transfer of an ownership interest in a lease, permit, license, certificate, or other entitlement for use or permission to act by an agency, either singly or in combination with other state agencies, does not trigger review under subsection (1)(a)(iv) if there is not a material change in terms or conditions of the entitlement or unless otherwise provided by law.

(2) (a) An environmental review conducted pursuant to subsection (1) may include a greenhouse gas assessment subject to 75-1-211. The department of environmental quality shall develop a guidance document for use by state agencies to determine when a greenhouse gas assessment may be necessary. The guidance must include direction on methodologies for completing a greenhouse gas assessment. Prior to finalizing this guidance, the department shall provide public notice of the draft guidance and allow for public comment.

(b) An environmental review conducted pursuant to subsection (1) may include an evaluation of the reasonably foreseeable environmental impacts of a proposed action if conducted jointly by a state agency and a federal agency to the extent the review of the expanded assessment is required by the federal agency.

(3) The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

(4) (a) (i) A challenge to an agency's environmental review under this part may only be brought against a state action approved in a final decision document and may only be brought in district court or in federal court, whichever is appropriate. A challenge may only be brought by a person who submits formal comments on the agency's environmental review prior to the issuance of the agency's final decision document, and the challenge must be limited to those issues raised in those comments.

(ii) Any action or proceeding challenging a state action approved in a final decision document alleging failure to comply with or inadequate compliance with a requirement under this part must be brought within 60 days of the action that is the subject of the challenge.

(iii) For an action taken by the board of land commissioners or the department of natural resources and conservation under Title 77, "final agency action" means the date that the board of land commissioners or the department of natural resources and conservation issues a final environmental review document under this part or the date that the board approves the action that is subject to this part, whichever is later.

(b) Any action or proceeding under subsection (4)(a)(ii) must take precedence over other cases or matters in the district court unless otherwise provided by law.

(c) Any judicial action or proceeding brought in district court under subsection (4)(a) involving an equine slaughter or processing facility must comply with 81-9-240 and 81-9-241.

(5) (a) (i) In an action alleging noncompliance or inadequate compliance with a requirement of parts 1 through 3, including a challenge to an agency's decision that an environmental review is not required or a claim that the environmental review is inadequate, the agency shall compile and submit to the court the certified record of its decision at issue. The agency, prior to submitting the certified record to the court, shall assess and collect from the person challenging the decision a fee to pay for actual costs to compile and submit the certified record. Except as provided in subsection (5)(b), the person challenging the decision has the burden of proving the claim by clear and convincing evidence contained in the record.

(ii) Except as provided in subsection (5)(b), in a challenge to the agency's decision or the adequacy of an environmental review, a court may not consider any information, including but not limited to an issue, comment, argument, proposed alternative, analysis, or evidence, that was not first presented to the agency for the agency's consideration prior to the agency's decision or within the time allowed for comments to be submitted.

(iii) Except as provided in subsection (5)(b), the court shall confine its review to the record certified by the agency. The court shall affirm the agency's decision or the environmental review unless the court specifically finds that the agency's decision was arbitrary and capricious.

(iv) A customer fiscal impact analysis pursuant to 69-2-216 or an allegation that the customer fiscal impact analysis is inadequate may not be used as the basis of an action challenging or seeking review of the agency's decision.

(b) (i) When a party challenging the decision or the adequacy of the environmental review or decision presents information not in the record certified by the agency, the challenging party

shall certify under oath in an affidavit that the information is new, material, and significant evidence that was not publicly available before the agency's decision and that is relevant to the decision or the adequacy of the agency's environmental review.

(ii) If on reviewing the affidavit the court finds that the proffered information is new, material, and significant evidence that was not publicly available before the agency's decision and that is relevant to the decision or to the adequacy of the agency's environmental review, the court shall remand the new evidence to the agency for the agency's consideration and an opportunity to modify its decision or environmental review before the court considers the evidence as a part of the administrative record under review.

(iii) If the court finds that the information in the affidavit does not meet the requirements of subsection (5)(b)(i), the court may not remand the matter to the agency or consider the proffered information in making its decision.

(c) (i) The remedies provided in this section for successful challenges to a decision of the agency or the adequacy of the statement are exclusive.

(ii) If the court finds that noncompliance has occurred with parts 1 through 3, the court may remand the matter to the agency to correct the noncompliance.

(iii) Notwithstanding the provisions of 27-19-201 and 27-19-314, a court having considered the pleadings of parties and intervenors opposing a request for a temporary restraining order, preliminary injunction, permanent injunction, vacatur, or other equitable relief may not enjoin, void, nullify, revoke, modify, or suspend the issuance or effectiveness of a license or permit or a part of a license or permit issued pursuant to Title 75 or Title 82 unless the court specifically finds that the party requesting the relief is more likely than not to prevail on the merits of its complaint given the uncontroverted facts in the record and applicable law and, in the absence of a temporary restraining order, a preliminary injunction, a permanent injunction, vacatur, or other equitable relief, that the:

(A) party requesting the relief will suffer irreparable harm in the absence of the relief;

(B) issuance of the relief is in the public interest. In determining whether the grant of the relief is in the public interest, a court:

(I) may not consider the legal nature or character of any party; and

(II) shall consider the implications of the relief on the local and state economy and make written findings with respect to both.

(C) relief is as narrowly tailored as the facts allow to address both the alleged noncompliance and the irreparable harm the party asking for the relief will suffer. In tailoring the relief, the court shall ensure, to the extent possible, that the project or as much of the project as possible can go forward while also providing the relief to which the applicant has been determined to be entitled.

(d) The court may issue a temporary restraining order, preliminary injunction, permanent injunction, or other injunctive relief only if the party seeking the relief provides a written undertaking to the court in an amount reasonably calculated by the court as adequate to pay the costs and damages sustained by any party that may be found to have been wrongfully enjoined or restrained by a court through a subsequent judicial decision in the case, including but not limited to lost wages of employees and lost project revenues for 1 year. If the party seeking an injunction or a temporary restraining order objects to the amount of the written undertaking for any reason, including but not limited to its asserted inability to pay, that party shall file an affidavit with the court that states the party's income, assets, and liabilities in order to facilitate the court's consideration of the amount of the written undertaking that is required. The affidavit must be served on the party enjoined. An injunction may only be issued if the challenger:

(i) proves there is a likelihood of succeeding on the merits;

(ii) proves there is a violation of an established law or regulation on which the lease, permit, license, certificate, or other entitlement or authority is based; and

(iii) subject to the demonstration of the inability to pay, posts the appropriate written undertaking.

(e) An individual or entity seeking a lease, permit, license, certificate, or other entitlement or authority to act may intervene in a lawsuit in court challenging a decision or statement by a department or agency of the state as a matter of right if the individual or entity has not been named as a defendant.

(f) Attorney fees or costs may not be awarded to the prevailing party in an action alleging noncompliance or inadequate compliance with a requirement of parts 1 through 3.

(6) For the purposes of judicial review, to the extent that the requirements of this section are inconsistent with the provisions of the National Environmental Policy Act, the requirements of this section apply to an environmental review or any severable portion of an environmental review within the state's jurisdiction that is being prepared by a state agency pursuant to this part in conjunction with a federal agency proceeding pursuant to the National Environmental Policy Act.

(7) The director of the agency responsible for the determination or recommendation shall endorse in writing any determination of significance made under subsection (1)(a)(iv) or any recommendation that a determination of significance be made.

(8) A project sponsor may request a review of the significance determination or recommendation made under subsection (7) by the appropriate board, if any. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue. The period of time between the request for a review and completion of a review under this subsection may not be included for the purposes of determining compliance with the time limits established for environmental review in 75-1-208.

History: En. Sec. 4, Ch. 238, L. 1971; R.C.M. 1947, 69-6504; amd. Sec. 1, Ch. 391, L. 1979; amd. Sec. 1, Ch. 473, L. 1987; amd. Sec. 1, Ch. 566, L. 1989; amd. Sec. 1, Ch. 331, L. 1995; amd. Sec. 3, Ch. 352, L. 1995; amd. Sec. 177, Ch. 418, L. 1995; amd. Sec. 67, Ch. 545, L. 1995; amd. Sec. 1, Ch. 223, L. 1999; amd. Sec. 1, Ch. 186, L. 2001; amd. Sec. 1, Ch. 267, L. 2001; amd. Sec. 1, Ch. 268, L. 2001; amd. Sec. 3, Ch. 299, L. 2001; amd. Sec. 1, Ch. 300, L. 2001; amd. Sec. 1, Ch. 125, L. 2003; amd. Sec. 2, Ch. 131, L. 2003; amd. Sec. 3, Ch. 469, L. 2007; amd. Sec. 3, Ch. 416, L. 2009; amd. Secs. 6, 7, Ch. 396, L. 2011; amd. Sec. 1, Ch. 450, L. 2023; amd. Sec. 1, Ch. 703, L. 2023; amd. Sec. 8, Ch. 246, L. 2025.

Compiler's Comments

2025 Amendment — Coordination: See 2025 Session Law for amendment made by sec. 8, Ch. 246, L. 2025. Amendment effective May 1, 2025.

The amendments to this section made by sec. 2, Ch. 246, L. 2025, sec. 7, Ch. 248, L. 2025, and sec. 2, Ch. 348, L. 2025, were replaced by sec. 8, Ch. 246, L. 2025, a coordination section.

Applicability: Section 9, Ch. 246, L. 2025, provided: "[This act] applies to all decisions pending but not decided by a court and cases filed on or after [the effective date of this act]." Effective May 1, 2025.

Cross-References

Citizens' right to participate satisfied if environmental impact statement filed, 2-3-104.

Statement to contain information regarding heritage properties and paleontological remains, 22-3-433.

Public Service Commission, Title 69, ch. 1, part 1.

Statement under lakeshore protection provisions required, 75-7-213.

Impact statement for facility siting, 75-20-211.

Fees for impact statements concerning water permits, 85-2-124.

Energy emergency provisions — exclusion, 90-4-310.

75-1-202. Agency rules to prescribe fees. Each agency of state government charged with the responsibility of issuing a lease, permit, contract, license, or certificate under any provision of state law may adopt rules prescribing fees that must be paid by a person, corporation, partnership, firm, association, or other private entity when an application for a lease, permit, contract, license, or certificate will require an agency to compile an environmental impact statement as prescribed by 75-1-201 and the agency has not made the finding under 75-1-205(1)(a). An agency shall determine whether it will be necessary to compile an environmental impact statement and assess a fee as prescribed by this section within any statutory timeframe for issuance of the lease, permit, contract, license, or certificate or, if no statutory timeframe is provided, within 90 days. Except as provided in 85-2-124, the fee assessed under this section may be used only to gather data and information necessary to compile an environmental impact statement as defined in parts 1 through 3. A fee may not be assessed if an agency intends only to file a negative declaration stating that the proposed project will not have a significant impact on Montana's environment.

History: En. 69-6518 by Sec. 1, Ch. 329, L. 1975; R.C.M. 1947, 69-6518(1); amd. Sec. 1, Ch. 337, L. 2005; amd. Sec. 3, Ch. 348, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 348, L. 2025. Amendment effective May 1, 2025.

Cross-References

Fees authorized for environmental review of subdivision plats, 76-4-105.

Fees in connection with environmental impact statement required before issuing permits to appropriate water, 85-2-124.

75-1-203. Fee schedule — maximums. (1) In prescribing fees to be assessed against applicants for a lease, permit, contract, license, or certificate as specified in 75-1-202, an agency may adopt a fee schedule that may be adjusted depending upon the size and complexity of the proposed project. A fee may not be assessed unless the application for a lease, permit, contract, license, or certificate will result in the agency incurring expenses in excess of $2,501 to compile an environmental impact statement.

(2) The maximum fee that may be imposed by an agency may not exceed 2% of any estimated cost up to $1 million, plus 1% of any estimated cost over $1 million and up to $20 million, plus 1/2 of 1% of any estimated cost over $20 million and up to $100 million, plus 1/4 of 1% of any estimated cost over $100 million and up to $300 million, plus 1/8 of 1% of any estimated cost in excess of $300 million.

(3) If an application consists of two or more facilities, the filing fee must be based on the total estimated cost of the combined facilities. The estimated cost must be determined by the agency and the applicant at the time the application is filed.

(4) Each agency shall review and revise its rules imposing fees as authorized by this part at least every 2 years.

(5) In calculating fees under this section, the agency may not include in the estimated project cost the project sponsor's property or other interests already owned by the project sponsor at the time the application is submitted. Any fee assessed may be based only on the projected cost of acquiring all of the information and data needed for the environmental impact statement.

History: En. 69-6518 by Sec. 1, Ch. 329, L. 1975; R.C.M. 1947, 69-6518(2), (7); amd. Sec. 47, Ch. 112, L. 1991; amd. Sec. 41, Ch. 349, L. 1993; amd. Sec. 1, Ch. 251, L. 2001; amd. Sec. 3, Ch. 396, L. 2011.

75-1-204. Application of administrative procedure act. In adopting rules prescribing fees as authorized by this part, an agency shall comply with the provisions of the Montana Administrative Procedure Act.

History: En. 69-6518 by Sec. 1, Ch. 329, L. 1975; R.C.M. 1947, 69-6518(4).

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

75-1-205. Collection and use of fees and costs. (1) A person who applies to a state agency for a permit, license, or other authorization that the agency determines requires preparation of an environmental impact statement is responsible for paying:

(a) the agency's costs of preparing the environmental impact statement and conducting the environmental impact statement process if the agency makes a written determination, based on material evidence identified in the determination, that there will be a significant environmental impact or a potential for a significant environmental impact. If a customer fiscal impact analysis is required under 69-2-216, the applicant shall also pay the staff and consultant costs incurred by the office of consumer counsel in preparing the analysis.

(b) a fee as provided in 75-1-202 if the agency does not make the determination provided for in subsection (1)(a).

(2) Costs payable under subsection (1) include:

(a) the costs of generating, gathering, and compiling data and information that is not available from the applicant to prepare the draft environmental impact statement, any supplemental draft environmental impact statement, and the final environmental impact statement;

(b) the costs of writing, reviewing, editing, printing, and distributing a reasonable number of copies of the draft environmental impact statement;

(c) the costs of attending meetings and hearings on the environmental impact statement, including meetings and hearings held to determine the scope of the environmental impact statement; and

(d) the costs of preparing, printing, and distributing a reasonable number of copies of any supplemental draft environmental impact statement and the final environmental impact statement, including the cost of reviewing and preparing responses to public comment.

(3) Costs payable under subsection (1) include:

(a) payments to contractors hired to work on the environmental impact statement;

(b) salaries and expenses of an agency employee who is designated as the agency's coordinator for preparation of the environmental impact statement for time spent performing the activities described in subsection (2) or for managing those activities; and

(c) travel and per diem expenses for other agency personnel for attendance at meetings and hearings on the environmental impact statement.

(4) (a) Whenever the agency makes the determination in subsection (1)(a), it shall notify the applicant of the cost of conducting the process to determine the scope of the environmental impact statement. The applicant shall pay that cost, and the agency shall then conduct the scoping process. The timeframe in 75-1-208(4)(a)(i) and any statutory timeframe for a decision on the application are tolled until the applicant pays the cost of the scoping process.

(b) If the agency decides to hire a third-party contractor to prepare the environmental impact statement, the agency shall prepare a list of no fewer than four contractors acceptable to the agency and shall provide the applicant with a copy of the list. If fewer than four acceptable contractors are available, the agency shall include all acceptable contractors on the list. The applicant shall provide the agency with a list of at least 50% of the contractors from the agency's list. The agency shall select its contractor from the list provided by the applicant.

(c) Upon completion of the scoping process and subject to subsection (1)(d), the agency and the applicant shall negotiate an agreement for the preparation of the environmental impact statement. The agreement must provide that:

(i) the applicant shall pay the cost of the environmental impact statement as determined by the agency after consultation with the applicant. In determining the cost, the agency shall identify and consult with the applicant regarding the data and information that must be gathered and studies that must be conducted.

(ii) the agency shall prepare the environmental impact statement within a reasonable time determined by the agency after consultation with the applicant and set out in the agreement. This timeframe supersedes any timeframe in statute or rule. If the applicant and the agency cannot agree on a timeframe, the agency shall prepare the environmental impact statement within any timeframe provided by statute or rule.

(iii) the applicant shall make periodic advance payments to cover work to be performed;

(iv) the agency may order work on the environmental impact statement to stop if the applicant fails to make advance payment as required by the agreement. The time for preparation of the environmental impact statement is tolled for any period during which a stop-work order is in effect for failure to make advance payment.

(v) (A) if the agency determines that the actual cost of preparing the environmental impact statement will exceed the cost set out in the agreement or that more time is necessary to prepare the environmental impact statement, the agency shall submit proposed modifications to the agreement to the applicant;

(B) if the applicant does not agree to an extension of the time for preparation of the environmental impact statement, the agency may initiate the informal review process under subsection (4)(d). Upon completion of the informal review process, the agreement may be amended only with the consent of the applicant.

(C) if the applicant does not agree with the increased costs proposed by the agency, the applicant may refuse to agree to the modification and may also provide the agency with a written statement providing the reason that payment of the increased cost is not justified or, if applicable, the reason that a portion of the increased cost is not justified. The applicant may also request an informal review as provided in subsection (4)(d). If the applicant provides a written statement pursuant to this subsection (4)(c)(v)(C), the agreement must be amended to require the applicant to pay all undisputed increased cost and 75% of the disputed increased cost and to provide that the agency is responsible for 25% of the disputed increased cost. If the applicant does not provide the statement, the agreement must be amended to require the applicant to pay all increased costs.

(d) If the applicant does not agree with costs determined under subsection (4)(c)(i) or proposed under subsection (4)(c)(v), the applicant may initiate the informal review process pursuant to 75-1-208(3). If the applicant does not agree to a time extension proposed by the agency under subsection (4)(c)(v), the agency may initiate an informal review by an appropriate board under 75-1-208(3). The period of time for completion of the environmental impact

statement provided in the agreement is tolled from the date of submission of a request for a review by the appropriate board until the date of completion of the review by the appropriate board. However, the agency shall continue to work on preparation of the environmental impact statement during this period if the applicant has advanced money to pay for this work.

(5) All fees and costs collected under this part must be deposited in the state special revenue fund as provided in 17-2-102. All fees and costs paid pursuant to this part must be used as provided in this part. Upon completion of the necessary work, each agency shall make an accounting to the applicant of the funds expended and refund all unexpended funds without interest.

History: En. 69-6518 by Sec. 1, Ch. 329, L. 1975; R.C.M. 1947, 69-6518(5); amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 337, L. 2005; amd. Sec. 4, Ch. 469, L. 2007.

75-1-206. Multiple applications or combined facility. In cases where a combined facility proposed by an applicant requires action by more than one agency or multiple applications for the same facility, the governor shall designate a lead agency to collect one fee pursuant to this part, to coordinate the preparation of information required for all environmental impact statements which may be required, and to allocate and disburse the necessary funds to the other agencies which require funds for the completion of the necessary work.

History: En. 69-6518 by Sec. 1, Ch. 329, L. 1975; R.C.M. 1947, 69-6518(6).

75-1-207. Major facility siting applications excepted. (1) Except as provided in subsection (2), a fee as prescribed by this part may not be assessed against any person, corporation, partnership, firm, association, or other private entity filing an application for a certificate under the provisions of the Montana Major Facility Siting Act, Title 75, chapter 20.

(2) The department of environmental quality may require payment of costs under 75-1-205(1)(a) by a person who files a petition under 75-20-201(4).

History: En. 69-6518 by Sec. 1, Ch. 329, L. 1975; R.C.M. 1947, 69-6518(3); amd. Sec. 3, Ch. 337, L. 2005; amd. Sec. 37, Ch. 19, L. 2011; amd. Sec. 1, Ch. 409, L. 2021.

75-1-208. Environmental review procedure. (1) (a) Except as provided in 75-1-205(4) and subsection (1)(b) of this section, an agency shall comply with this section when completing any environmental review required under this part.

(b) To the extent that the requirements of this section are inconsistent with federal requirements, the requirements of this section do not apply to an environmental review that is being prepared jointly by a state agency pursuant to this part and a federal agency pursuant to the National Environmental Policy Act or to an environmental review that must comply with the requirements of the National Environmental Policy Act.

(2) (a) Except as provided in subsection (2)(b), a project sponsor may, after providing a 30-day notice, appear before the environmental quality council at any regularly scheduled meeting to discuss issues regarding the agency's environmental review of the project. The environmental quality council shall ensure that the appropriate agency personnel are available to answer questions.

(b) If the primary concern of the agency's environmental review of a project is the quality or quantity of water, a project sponsor may, after providing a 30-day notice, appear before the water policy committee established in 5-5-231 at any regularly scheduled meeting to discuss issues regarding the agency's environmental review of the project. The water policy committee shall ensure that the appropriate agency personnel are available to answer questions.

(3) If a project sponsor experiences problems in dealing with the agency or any consultant hired by the agency regarding an environmental review, the project sponsor may submit a written request to the agency director requesting a meeting to discuss the issues. The written request must sufficiently state the issues to allow the agency to prepare for the meeting. If the issues remain unresolved after the meeting with the agency director, the project sponsor may submit a written request to appear before the appropriate board, if any, to discuss the remaining issues. A written request to the appropriate board must sufficiently state the issues to allow the agency and the board to prepare for the meeting.

(4) (a) Subject to the requirements of subsection (5), to ensure a timely completion of the environmental review process, an agency is subject to the time limits listed in this subsection (4) unless other time limits are provided by law. All time limits are measured from the date the agency receives a complete application. An agency has:

(i) 60 days to complete a public scoping process, if any;

(ii) 90 days to complete an environmental review unless a detailed statement pursuant to 75-1-201(1)(a)(iv) or 75-1-205(4) is required; and

(iii) 180 days to complete a detailed statement pursuant to 75-1-201(1)(a)(iv).

(b) The period of time between the request for a review by a board and the completion of a review by a board under 75-1-201(8) or subsection (10) of this section may not be included for the purposes of determining compliance with the time limits established for conducting an environmental review under this subsection or the time limits established for permitting in 75-2-211, 75-2-218, 75-20-216, 75-20-231, 76-4-114, 82-4-122, 82-4-231, 82-4-337, and 82-4-432.

(5) An agency may extend the time limits in subsection (4) by notifying the project sponsor in writing that an extension is necessary and stating the basis for the extension. The agency may extend the time limit one time, and the extension may not exceed 50% of the original time period as listed in subsection (4). After one extension, the agency may not extend the time limit unless the agency and the project sponsor mutually agree to the extension.

(6) If the project sponsor disagrees with the need for the extension, the project sponsor may request that the appropriate board, if any, conduct a review of the agency's decision to extend the time period. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue.

(7) (a) Except as provided in subsection (7)(b), if an agency has not completed the environmental review by the expiration of the original or extended time period, the agency may not withhold a permit or other authority to act unless the agency makes a written finding that there is a likelihood that permit issuance or other approval to act would result in the violation of a statutory or regulatory requirement.

(b) Subsection (7)(a) does not apply to a permit granted under Title 75, chapter 2, or under Title 82, chapter 4, parts 1 and 2.

(8) Under this part, an agency may only request information from the project sponsor that is relevant to the environmental review required under this part.

(9) An agency shall ensure that the notification for any public scoping process associated with an environmental review conducted by the agency is presented in an objective and neutral manner and that the notification does not speculate on the potential impacts of the project.

(10) An agency may not require the project sponsor to provide engineering designs in greater detail than that necessary to fairly evaluate the proposed project. The project sponsor may request that the appropriate board, if any, review an agency's request regarding the level of design detail information that the agency believes is necessary to conduct the environmental review. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue.

(11) An agency shall, when appropriate, evaluate the cumulative impacts of a proposed project. However, related future actions may only be considered when these actions are under concurrent consideration by any agency through preimpact statement studies, separate impact statement evaluations, or permit processing procedures.

History: **En. Sec. 1, Ch. 299, L. 2001; amd. Sec. 4, Ch. 337, L. 2005; amd. Sec. 1, Ch. 366, L. 2009; amd. Sec. 4, Ch. 396, L. 2011; amd. Sec. 3, Ch. 122, L. 2015; amd. Sec. 4, Ch. 344, L. 2017; amd. Sec. 1, Ch. 80, L. 2019; amd. Sec. 3, Ch. 246, L. 2025; amd. Sec. 8, Ch. 248, L. 2025.**

Compiler's Comments

2025 Amendments — Composite Section — Code Commissioner Correction: See 2025 Session Law for amendment made by sec. 3, Ch. 246, L. 2025. Amendment effective May 1, 2025.

See 2025 Session Law for amendment made by sec. 8, Ch. 248, L. 2025. Amendment effective May 1, 2025.

In (4)(b) the Code Commissioner substituted "75-1-201(8)" for "75-1-201(7)" to correct an erroneous reference.

Applicability: Section 9, Ch. 246, L. 2025, provided: "[This act] applies to all decisions pending but not decided by a court and cases filed on or after [the effective date of this act]." Effective May 1, 2025.

Cross-References

Public scoping process defined, 75-1-220.

75-1-209. Agency determination of categorical exclusion. (1) (a) A state agency as defined in 2-4-102 shall identify actions that meet the definition of a categorical exclusion as provided in 75-1-220.

(b) A state action identified by a state agency as a categorical exclusion is exempt from the provisions of Title 75, chapter 1, parts 1 and 2.

(c) A state action determined by the state agency as meeting the requirements of a categorical exclusion under the National Environmental Policy Act, 42 U.S.C. 4321 et seq., and 40 CFR, parts 1500 through 1508, is exempt from the provisions of Title 75, chapter 1, parts 1 and 2.

(2) For a state action identified by a state agency as a categorical exclusion, there is a rebuttable presumption that extraordinary circumstances do not exist and that neither an environmental analysis nor an environmental impact statement is required.

(3) State agencies retain all existing authority provided in Title 75, chapter 1, parts 1 and 2, to identify and adopt, as authorized by rule, categorical exclusions and programmatic environmental assessments.

History: En. Sec. 1, Ch. 297, L. 2025.

Compiler's Comments

Effective Date: Section 9, Ch. 297, L. 2025, provided: "[This act] is effective on passage and approval." Approved May 1, 2025.

Cross-References

Exemption from environmental review, 18-2-109.

75-1-210. Report to legislature. State agencies as defined in 2-4-102 shall track the number and use of categorical exclusions and make those available upon request of the environmental quality council established in 5-16-101.

History: En. Sec. 2, Ch. 297, L. 2025.

Compiler's Comments

Effective Date: Section 9, Ch. 297, L. 2025, provided: "[This act] is effective on passage and approval." Approved May 1, 2025.

75-1-211. Greenhouse gas assessment. (1) Except as provided in 75-1-201(3), a state agency, when conducting an environmental review in accordance with parts 1 through 3:

(a) may conduct a greenhouse gas assessment in accordance with 75-1-201 for a proposed action if the agency determines the assessment is necessary to meet the requirements of parts 1 through 3; or

(b) shall conduct a greenhouse gas assessment in accordance with 75-1-201 for a proposed action that is defined as a fossil fuel activity as provided in 75-1-220.

(2) A greenhouse gas assessment is not required for a proposed action exempted from review under parts 1 through 3 or for categorical exclusions as provided in agency rules, programmatic review, or statute.

History: En. Sec. 1, Ch. 348, L. 2025.

Compiler's Comments

Effective Date: Section 7, Ch. 348, L. 2025, provided: "[This act] is effective on passage and approval." Approved May 1, 2025.

75-1-212 through 75-1-219 reserved.

75-1-220. Definitions. For the purposes of this part, the following definitions apply:

(1) "Alternatives analysis" means an evaluation of different parameters, mitigation measures, or control measures that would accomplish the same objectives as those included in the proposed action by the applicant. For a project that is not a state-sponsored project, it does not include an alternative facility or an alternative to the proposed project itself. The term includes alternatives required pursuant to Title 75, chapter 20.

(2) "Appropriate board" means, for administrative actions taken under this part by the:

(a) department of environmental quality, the board of environmental review, as provided for in 2-15-3502;

(b) department of fish, wildlife, and parks, the fish and wildlife commission, as provided for in 2-15-3402, and the state parks and recreation board, as provided for in 2-15-3406;

(c) department of transportation, the transportation commission, as provided for in 2-15-2502;

(d) department of natural resources and conservation for state trust land issues, the board of land commissioners, as provided for in Article X, section 4, of the Montana constitution;

(e) department of natural resources and conservation for oil and gas issues, the board of oil and gas conservation, as provided for in 2-15-3303; and

(f) department of livestock, the board of livestock, as provided for in 2-15-3102.

(3) "Categorical exclusion" means a state action that does not individually, collectively, or cumulatively result in a significant adverse effect on the human environment that would require an environmental assessment or environmental impact statement, as determined by agency rulemaking, programmatic review, or statute, unless extraordinary circumstances exist as defined by the agency rulemaking, programmatic review, or statute that would make the designation of categorical exclusion inappropriate.

(4) "Complete application" means, for the purpose of complying with this part, an application for a permit, license, or other authorization that contains all data, studies, plans, information, forms, fees, and signatures required to be included with the application sufficient for the agency to approve the application under the applicable statutes and rules.

(5) "Cumulative impacts" means the collective impacts on Montana's environment of the proposed action when considered in conjunction with other past, present, and future actions related to the proposed action by location or generic type.

(6) "Economic impacts" or "socioeconomic impacts" means the financial impacts that may occur to Montana's local economy if the proposed action occurs.

(7) "Environmental review" means any environmental assessment, environmental impact statement, or other written analysis required under this part by a state agency of a proposed action to determine, examine, or document the effects and impacts of the proposed action on the quality of Montana's environment as required under this part.

(8) (a) "Fossil fuel activity" means a proposed action that authorizes the mining of coal, drilling for oil or natural gas, production of oil or natural gas, compression of oil or natural gas, or burning of coal, oil, or natural gas to generate energy for electricity.

(b) The term does not include:

(i) burning biomass for electricity or industrial purposes;

(ii) transportation or transportation-related activities, including rail activities; or

(iii) a water quality-related or a water quantity-related lease, permit, license, certificate, or other entitlement for use or permission to act by a state agency for fossil fuel activities.

(9) "Greenhouse gas emissions" means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(10) "Project sponsor" means any applicant, owner, operator, agency, or other entity that is proposing an action that requires an environmental review. If the action involves state agency-initiated actions on state trust lands, the term also includes each institutional beneficiary of any trust as described in The Enabling Act of Congress, approved February 22, 1899, 25 Stat. 676, as amended, the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329.

(11) (a) "Proposed action" means a project, program, or activity:

(i) to be directly implemented by an agency;

(ii) to be supported through a contract, grant, subsidy, loan, or other form of financial assistance from an agency either singly or in combination with other state agencies; or

(iii) requiring the issuance of a lease, permit, license, certificate, or other entitlement for use or permission to act by the agency either singly or in combination with other state agencies, except as provided in 77-1-121.

(b) The term does not mean:

(i) an upstream, downstream, or other indirect action that occurs independently or is caused in part or exclusively by the proposed action; or

(ii) an action that occurs regardless of the proposed action.

(12) "Public scoping process" means any process to determine the scope of an environmental review.

(13) (a) "State-sponsored project" means:

(i) a project, program, or activity initiated and directly undertaken by a state agency;

(ii) except as provided in subsection (13)(b)(i), a project or activity supported through a contract, grant, subsidy, loan, or other form of funding assistance from a state agency, either singly or in combination with one or more other state agencies; or

(iii) except as provided in subsection (13)(b)(i), a project or activity authorized by a state agency acting in a land management capacity for a lease, easement, license, or other authorization to act.

(b) The term does not include:

(i) a project or activity undertaken by a private entity that is made possible by the issuance of permits, licenses, leases, easements, grants, loans, or other authorizations to act by the:

(A) department of environmental quality pursuant to Titles 75, 76, or 82;

(B) department of fish, wildlife, and parks pursuant to Title 87, chapter 4, part 4;

(C) board of oil and gas conservation pursuant to Title 82, chapter 11; or

(D) department of natural resources and conservation or the board of land commissioners pursuant to Titles 76, 77, 82, and 85; or

(ii) a project or activity involving the issuance of a permit, license, certificate, or other entitlement for permission to act by another agency acting in a regulatory capacity, either singly or in combination with other state agencies.

History: **En. Sec. 2, Ch. 267, L. 2001; en. Sec. 2, Ch. 268, L. 2001; en. Sec. 2, Ch. 299, L. 2001; en. Sec. 2, Ch. 300, L. 2001; amd. Sec. 15(3), (4), Ch. 299, L. 2001; amd. Sec. 99, Ch. 2, L. 2009; amd. Sec. 5, Ch. 396, L. 2011; amd. Sec. 21, Ch. 235, L. 2013; amd. Sec. 5, Ch. 297, L. 2025; amd. Sec. 4, Ch. 348, L. 2025.**

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 5, Ch. 297, L. 2025. Amendment effective May 1, 2025.

See 2025 Session Law for amendment made by sec. 4, Ch. 348, L. 2025. Amendment effective May 1, 2025.

Part 3
Environmental Quality Council

75-1-301. Definition of council. In this part "council" means the environmental quality council provided for in 5-16-101.

History: **En. by Code Commissioner, 1979.**

Cross-References

Qualifications, 5-16-102.
Term of membership, 5-16-103.
Officers, 5-16-105.

75-1-302. Meetings. The council may determine the time and place of its meetings but shall meet at least once each quarter. Each member of the council is entitled to receive compensation and expenses as provided in 5-2-302. Members who are full-time salaried officers or employees of this state may not be compensated for their service as members but shall be reimbursed for their expenses.

History: **En. Sec. 10, Ch. 238, L. 1971; amd. Sec. 6, Ch. 103, L. 1977; R.C.M. 1947, 69-6510.**

75-1-303 through 75-1-310 reserved.

75-1-311. Examination of records of government agencies. The council shall have the authority to investigate, examine, and inspect all records, books, and files of any department, agency, commission, board, or institution of the state of Montana.

History: **En. Sec. 15, Ch. 238, L. 1971; R.C.M. 1947, 69-6515.**

75-1-312. Hearings — council subpoena power — contempt proceedings. In the discharge of its duties, the council may hold hearings, administer oaths, issue subpoenas, compel the attendance of witnesses and the production of any papers, books, accounts, documents, and testimony, and cause depositions of witnesses to be taken in the manner prescribed by law for taking depositions in civil actions in the district court. In case of disobedience on the part of a person to comply with a subpoena issued on behalf of the council or a committee of the council or of the refusal of a witness to testify on any matters regarding which the witness may be lawfully interrogated, it is the duty of the district court of any county or the judge of the district court, on application of the council, to compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the court on a refusal to testify in the court.

History: **En. Sec. 16, Ch. 238, L. 1971; R.C.M. 1947, 69-6516; amd. Sec. 2488, Ch. 56, L. 2009.**

Cross-References

Warrant of attachment or commitment for contempt, 3-1-513.
Subpoena — disobedience, 26-2-104 through 26-2-107.
Criminal contempt, 45-7-309.

75-1-313. Consultation with other groups — utilization of services. In exercising its powers, functions, and duties under parts 1 through 3, the council shall:

(1) consult with such representatives of science, industry, agriculture, labor, conservation organizations, educational institutions, local governments, and other groups as it deems advisable; and

(2) utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies and organizations and individuals in order that duplication of effort and expense may be avoided, thus assuring that the council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

History: En. Sec. 17, Ch. 238, L. 1971; R.C.M. 1947, 69-6517.

75-1-314. Repealed. Sec. 14, Ch. 460, L. 2025.

History: En. Sec. 1, Ch. 38, L. 1997; amd. Sec. 98, Ch. 261, L. 2021.

75-1-315 through 75-1-320 reserved.

75-1-321. Repealed. Sec. 82, Ch. 545, L. 1995.

History: En. Sec. 11, Ch. 238, L. 1971; R.C.M. 1947, 69-6511.

75-1-322. Repealed. Sec. 82, Ch. 545, L. 1995.

History: En. Sec. 13, Ch. 238, L. 1971; R.C.M. 1947, 69-6513.

75-1-323. Staff for environmental quality council. The legislative services division shall provide sufficient and appropriate support to the environmental quality council in order that it may carry out its statutory duties, within the limitations of legislative appropriations. The environmental quality council staff is a principal subdivision within the legislative services division. There is within the legislative services division a legislative environmental analyst. The legislative environmental analyst is the primary staff person for the environmental quality council and shall supervise staff assigned to the environmental quality council. The environmental quality council shall select the legislative environmental analyst with the concurrence of the legislative council.

History: En. Sec. 12, Ch. 238, L. 1971; R.C.M. 1947, 69-6512; amd. Sec. 68, Ch. 545, L. 1995.

75-1-324. Duties of environmental quality council. The environmental quality council shall:

(1) gather timely and authoritative information concerning the conditions and trends in the quality of the environment, both current and prospective, analyze and interpret the information for the purpose of determining whether the conditions and trends are interfering or are likely to interfere with the achievement of the policy set forth in this chapter, and compile and submit to the governor and the legislature studies relating to the conditions and trends;

(2) review and appraise the various programs and activities of the state agencies, in the light of the policy set forth in this chapter, for the purpose of determining the extent to which the programs and activities are contributing to the achievement of the policy and make recommendations to the governor and the legislature with respect to the policy;

(3) develop and recommend to the governor and the legislature state policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the state;

(4) conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(5) document and define changes in the natural environment, including the plant and animal systems, and accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(6) make and furnish studies, reports on studies, and recommendations with respect to matters of policy and legislation as the legislature requests;

(7) analyze legislative proposals in clearly environmental areas and in other fields in which legislation might have environmental consequences and assist in preparation of reports for use by legislative committees, administrative agencies, and the public;

(8) consult with and assist legislators who are preparing environmental legislation to clarify any deficiencies or potential conflicts with an overall ecologic plan;

(9) review and evaluate operating programs in the environmental field in the several agencies to identify actual or potential conflicts, both among the activities and with a general ecologic perspective, and suggest legislation to remedy the situations; and

(10) except as provided in 5-5-231, perform the administrative rule review, draft legislation review, program evaluation, and monitoring functions of an interim committee for the following executive branch agencies and the entities attached to the agencies for administrative purposes:

(a) department of environmental quality;

(b) department of fish, wildlife, and parks; and

(c) department of natural resources and conservation.

History: **En. Sec. 14, Ch. 238, L. 1971; R.C.M. 1947, 69-6514; amd. Sec. 42, Ch. 349, L. 1993; amd. Sec. 69, Ch. 545, L. 1995; amd. Sec. 47, Ch. 19, L. 1999; amd. Sec. 19, Ch. 210, L. 2001; amd. Sec. 1, Ch. 33, L. 2003; amd. Sec. 4, Ch. 122, L. 2015; amd. Sec. 9, Ch. 248, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 9, Ch. 248, L. 2025. Amendment effective May 1, 2025.

Interim Study of State Fire Suppression Issues, Methods, and Costs: Chapter 478, L. 2025, required the environmental quality council to conduct a study of Montana's fire suppression issues, methods, and costs, prepare a final report, and prepare draft legislation. Chapter 478 was effective May 8, 2025, and terminates December 31, 2026.

Parts 4 through 9 reserved

Part 10
Penalties, Fees, and Interest

75-1-1001. Penalty factors. (1) In determining the amount of an administrative or civil penalty to which subsection (4) applies, the department of environmental quality or the district court, as appropriate, shall take into account the following factors:

(a) the nature, extent, and gravity of the violation;

(b) the circumstances of the violation;

(c) the violator's prior history of any violation, which:

(i) must be a violation of a requirement under the authority of the same chapter and part as the violation for which the penalty is being assessed;

(ii) must be documented in an administrative order or a judicial order or judgment issued within 3 years prior to the date of the occurrence of the violation for which the penalty is being assessed; and

(iii) may not, at the time that the penalty is being assessed, be undergoing or subject to administrative appeal or judicial review;

(d) the economic benefit or savings resulting from the violator's action;

(e) the violator's good faith and cooperation;

(f) the amounts voluntarily expended by the violator, beyond what is required by law or order, to address or mitigate the violation or impacts of the violation; and

(g) other matters that justice may require.

(2) After the amount of a penalty is determined under subsection (1), the department of environmental quality or the district court, as appropriate, may consider the violator's financial ability to pay the penalty and may institute a payment schedule or suspend all or a portion of the penalty.

(3) The department of environmental quality may accept a supplemental environmental project as mitigation for a portion of the penalty. For purposes of this section, a "supplemental environmental project" is an environmentally beneficial project that a violator agrees to undertake in settlement of an enforcement action but which the violator is not otherwise legally required to perform.

(4) This section applies to penalties assessed by the department of environmental quality or the district court under Title 75, chapters 2, 5, 6, 8, 11, and 20; Title 75, chapter 10, parts 2, 4, 5, and 12; and Title 76, chapter 4.

(5) The department of environmental quality may adopt rules to implement this section.

History: **En. Sec. 1, Ch. 487, L. 2005; amd. Sec. 10, Ch. 320, L. 2017; amd. Sec. 5, Ch. 324, L. 2021.**

75-1-1002. Collection of penalties, fees, late fees, and interest. (1) If the department of environmental quality is unable to collect penalties, fees, late fees, or interest assessed pursuant to the provisions of Title 75 or Title 76, chapter 4, the department of environmental quality may assign the debt to a collection service or transfer the debt to the department of revenue pursuant to Title 17, chapter 4, part 1.

(2) (a) The reasonable collection costs of a collection service, if approved by the department of environmental quality, or assistance costs charged the department of environmental quality by the department of revenue pursuant to 17-4-103(3) may be added to the debt for which collection is being sought.

(b) (i) All money collected by the department of revenue is subject to the provisions of 17-4-106.

(ii) All money collected by a collection service must be paid to the department of environmental quality and deposited in the general fund or the accounts specified in statute for the assessed penalties, fees, late fees, or interest, except that the collection service may retain those collection costs or, if the total debt is not collected, that portion of collection costs that are approved by the department.

History: En. Sec. 2, Ch. 487, L. 2005.

Part 11
Environmental Contingency Grant Program

Part Cross-References

Resource indemnity trust, Art. IX, sec. 2, Mont. Const.
Department of Natural Resources and Conservation, 2-15-3301.
Resource indemnity trust tax, Title 15, ch. 38.
Renewable resource grant and loan program, Title 85, ch. 1, part 6.
Renewable resource development program, Title 90, ch. 2.

75-1-1101. Environmental contingency account objectives. (1) There is an environmental contingency account within the state special revenue fund established in 17-2-102. The environmental contingency account is controlled by the governor.

(2) At the beginning of each biennium, $175,000 must be allocated to the environmental contingency account from the interest income of the resource indemnity trust fund with the following exceptions:

(a) if at the beginning of any biennium the unobligated cash balance in the environmental contingency account equals or exceeds $750,000, allocation may not be made; and

(b) if at the beginning of any biennium the unobligated cash balance in the environmental contingency account is less than $750,000, then an amount less than or equal to the difference between the unobligated cash balance and $750,000, but not to exceed $175,000, must be allocated to the environmental contingency account from the interest income of the resource indemnity trust fund.

(3) Funds are statutorily appropriated, as provided in 17-7-502, from the environmental contingency account upon the authorization of the governor to meet unanticipated public needs consistent with the following objectives:

(a) to support renewable resource development projects in communities that face an emergency or imminent need for the services or to prevent the physical failure of a project;

(b) to preserve vegetation, water, soil, fish, wildlife, or other renewable resources from an imminent physical threat or during an emergency, not including:

(i) natural disasters adequately covered by other funding sources; or

(ii) fire;

(c) to respond to an emergency or imminent threat to persons, property, or the environment caused by mineral development;

(d) to respond to an emergency or imminent threat to persons, property, or the environment caused by a hazardous material; and

(e) to fund the environmental quality protection fund provided for in 75-10-704 or to take other necessary actions, including the construction of facilities, to respond to actual or potential threats to persons, property, or the environment caused by hazardous wastes or other hazardous materials.

(4) Interest from funds in the environmental contingency account accrues to the general fund.

(5) The governor shall submit to the legislative fiscal analyst, as a part of the information required by 17-7-111, a complete financial report on the environmental contingency account, including a description of all expenditures made since the preceding report. The report must be provided in an electronic format. The department shall provide a copy of the report to the legislature in accordance with 5-11-210.

History: En. Sec. 4, HB 922, L. 1985; amd. Sec. 5, HB 30, Sp. L. June 1986; amd. Sec. 138, Ch. 370, L. 1987; amd. Sec. 13, Ch. 418, L. 1987; amd. Sec. 48, Ch. 112, L. 1991; amd. Sec. 43, Ch. 349, L. 1993; amd. Sec. 15, Ch. 270, L. 1995; amd. Sec. 263, Ch. 42, L. 1997; amd. Sec. 4, Ch. 444, L. 1997; amd. Sec. 9, Ch. 432, L. 2007; amd. Sec. 18, Ch. 120, L. 2013; amd. Sec. 99, Ch. 261, L. 2021.

Cross-References

Resource indemnity trust tax, Title 15, ch. 38.

Abatement of environmental emergencies, 82-4-357.

75-1-1102. Repealed. Secs. 16(1), 21(2), Ch. 418, L. 1987.
History: En. Sec. 2, HB 922, L. 1985.

75-1-1103 through 75-1-1110 reserved.

75-1-1111. Repealed. Secs. 16(1), 21(2), Ch. 418, L. 1987.
History: En. Sec. 5, HB 922, L. 1985.

75-1-1112. Repealed. Secs. 16(1), 21(2), Ch. 418, L. 1987.
History: En. Sec. 6, HB 922, L. 1985.

Part 12
Voluntary Environmental Audit Act (Terminated)

75-1-1201. Terminated. Sec. 10, Ch. 534, L. 1997.
History: En. Sec. 1, Ch. 534, L. 1997.

75-1-1202. Terminated. Sec. 10, Ch. 534, L. 1997.
History: En. Sec. 2, Ch. 534, L. 1997.

75-1-1203. Terminated. Sec. 10, Ch. 534, L. 1997.
History: En. Sec. 3, Ch. 534, L. 1997.

75-1-1204. Terminated. Sec. 10, Ch. 534, L. 1997.
History: En. Sec. 4, Ch. 534, L. 1997.

75-1-1205. Terminated. Sec. 10, Ch. 534, L. 1997.
History: En. Sec. 5, Ch. 534, L. 1997.

75-1-1206. Terminated. Sec. 10, Ch. 534, L. 1997.
History: En. Sec. 6, Ch. 534, L. 1997.

CHAPTER 2
AIR QUALITY

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Chapter Cross-References
Local government smoke abatement programs, Title 7, ch. 31, part 1.
Nuisances, Title 27, ch. 30.
Montana Clean Indoor Air Act of 1979, Title 50, ch. 40.
Penalties, fees, and interest, Title 75, ch. 1, part 10.
Energy emergency provisions — exclusion, 90-4-310.

Part 1
General Provisions and Administration

75-2-101. Short title. Parts 1 through 4 of this chapter are known and may be cited as the "Clean Air Act of Montana".

History: En. Sec. 1, Ch. 313, L. 1967; R.C.M. 1947, 69-3904; amd. Sec. 264, Ch. 42, L. 1997.

75-2-102. Intent — policy and purpose. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Clean Air Act of Montana. It is the legislature's intent that the requirements of parts 1 through 4 of this chapter provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) It is the public policy of this state and the purpose of this chapter to achieve and maintain levels of air quality that will protect human health and safety and, to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state, and facilitate the enjoyment of the natural attractions of this state. This policy must be balanced by the legislature with the policy of protecting the ability of the people to pursue life's basic necessities and to acquire property and to use that property in all lawful ways.

(3) Local and regional air pollution control programs must be supported to the extent practicable as essential instruments for the securing and maintenance of appropriate levels of air quality.

(4) To these ends it is the purpose of this chapter to:

(a) provide for a coordinated statewide program of air pollution prevention, abatement, and control;

(b) provide for an appropriate distribution of responsibilities among the state and local units of government;

(c) facilitate cooperation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions; and

(d) provide a framework within which all values may be balanced in the public interest.

History: En. Sec. 2, Ch. 313, L. 1967; R.C.M. 1947, 69-3905; amd. Sec. 7, Ch. 361, L. 2003.

Cross-References
Beauty of state, Preamble, Mont. Const.
Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.
Duty to maintain clean and healthful environment, Art. IX, sec. 1, Mont. Const.

75-2-103. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination of those air contaminants.

(2) "Air pollutants" means one or more air contaminants that are present in the outdoor atmosphere, including those pollutants regulated pursuant to section 7412 and Subchapter V of the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(3) "Air pollution" means the presence of air pollutants in a quantity and for a duration that are or tend to be injurious to human health or welfare, animal or plant life, or property or that would unreasonably interfere with the enjoyment of life, property, or the conduct of business.

(4) "Associated supporting infrastructure" means:

(a) electric transmission and distribution facilities;

(b) pipeline facilities;

(c) aboveground ponds and reservoirs and underground storage reservoirs;

(d) rail transportation;

(e) aqueducts and diversion dams;

(f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or

(g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development project.

(5) "Board" means the board of environmental review provided for in 2-15-3502.

(6) (a) "Commercial hazardous waste incinerator" means:

(i) an incinerator that burns hazardous waste; or

(ii) a boiler or industrial furnace subject to the provisions of 75-10-406.

(b) Commercial hazardous waste incinerator does not include a research and development facility that receives federal or state research funds and that burns hazardous waste primarily to test and evaluate waste treatment remediation technologies.

(7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Emission" means a release into the outdoor atmosphere of air contaminants.

(9) "Energy development project" means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:

(a) generating electricity;

(b) producing gas derived from coal;

(c) producing liquid hydrocarbon products;

(d) refining crude oil or natural gas;

(e) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5; or

(f) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.

(10) "Environmental protection law" means a law contained in or an administrative rule adopted pursuant to Title 75, chapter 2, 5, 10, or 11.

(11) "Hazardous waste" means:

(a) a substance defined as hazardous under 75-10-403 or defined as hazardous in department administrative rules adopted pursuant to Title 75, chapter 10, part 4; or

(b) a waste containing 2 parts or more per million of polychlorinated biphenyl (PCB).

(12) (a) "Incinerator" means any single- or multiple-chambered combustion device that burns combustible material, alone or with a supplemental fuel or with catalytic combustion assistance, primarily for the purpose of removal, destruction, disposal, or volume reduction of any portion of the input material.

(b) Incinerator does not include:

(i) safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants, or elemental phosphorus plants;

(ii) space heaters that burn used oil;

(iii) wood-fired boilers;

(iv) wood waste burners, such as tepee, wigwam, truncated cone, or silo burners;

(v) air pollution control devices required by state or federal rule or another applicable requirement; or

(vi) air pollution control devices that are:

(A) operating alone or at a facility where emissions are less than the permitting or registration threshold; and

(B) exempt from the requirements of 75-2-211 or 75-2-234.

(13) "Medical waste" means any waste that is generated in the diagnosis, treatment, or immunization of human beings or animals, in medical research on humans or animals, or in the production or testing of biologicals. The term includes:

(a) cultures and stocks of infectious agents;

(b) human pathological wastes;

(c) waste human blood or products of human blood;

(d) sharps;

(e) contaminated animal carcasses, body parts, and bedding that were known to have been exposed to infectious agents during research;

(f) laboratory wastes and wastes from autopsy or surgery that were in contact with infectious agents; and

(g) biological waste and discarded material contaminated with blood, excretion, exudates, or secretions from humans or animals.

(14) (a) "Oil or gas well facility" means a well that produces oil or natural gas. The term includes:

(i) equipment associated with the well and used for the purpose of producing, treating, separating, or storing oil, natural gas, or other liquids produced by the well; and

(ii) a group of wells under common ownership or control that produce oil or natural gas and that share common equipment used for the purpose of producing, treating, separating, or storing oil, natural gas, or other liquids produced by the wells.

(b) The equipment referred to in subsection (14)(a) includes but is not limited to wellhead assemblies, amine units, prime mover engines, phase separators, heater treater units, dehydrator units, tanks, and connecting tubing.

(c) The term does not include equipment such as compressor engines used for transmission of oil or natural gas.

(15) "Person" means an individual, a partnership, a firm, an association, a municipality, a public or private corporation, the state or a subdivision or agency of the state, a trust, an estate, an interstate body, the federal government or an agency of the federal government, or any other legal entity and includes persons resident in Canada.

(16) "Principal" means a principal of a corporation, including but not limited to a partner, associate, officer, parent corporation, or subsidiary corporation.

(17) "Small business stationary source" means a stationary source that:

(a) is owned or operated by a person who employs 100 or fewer individuals;

(b) is a small business concern as defined in the Small Business Act, 15 U.S.C. 631, et seq.;

(c) is not a major stationary source as defined in Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.;

(d) emits less than 50 tons per year of an air pollutant;

(e) emits less than a total of 75 tons per year of all air pollutants combined; and

(f) is not excluded from this definition under 75-2-108(3).

(18) (a) "Solid waste" means all putrescible and nonputrescible solid, semisolid, liquid, or gaseous wastes, including but not limited to garbage; rubbish; refuse; ashes; swill; food wastes; commercial or industrial wastes; medical waste; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction, demolition, or salvage wastes; dead animals, dead animal parts, offal, animal droppings, or litter; discarded home and industrial appliances; automobile bodies, tires, interiors, or parts thereof; wood products or wood byproducts and inert materials; styrofoam and other plastics; rubber materials; asphalt shingles; tarpaper; electrical equipment, transformers, or insulated wire; oil or petroleum products or oil or petroleum products and inert materials; treated lumber and timbers; and pathogenic or infectious waste.

(b) Solid waste does not include municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of environmental quality, or slash and forest debris regulated under laws administered by the department of natural resources and conservation.

History: En. Sec. 3, Ch. 313, L. 1967; amd. Sec. 13, Ch. 349, L. 1974; amd. Sec. 1, Ch. 308, L. 1977; R.C.M. 1947, 69-3906; amd. Sec. 1, Ch. 129, L. 1993; amd. Sec. 1, Ch. 502, L. 1993; amd. Sec. 1, Ch. 639, L. 1993; amd. Sec. 178, Ch. 418, L. 1995; amd. Secs. 523, 568, Ch. 546, L. 1995; amd. Sec. 1, Ch. 236, L. 2005; amd. Sec. 4, Ch. 445, L. 2009; amd. Sec. 1, Ch. 417, L. 2013; amd. Sec. 34, Ch. 3, L. 2019; amd. Sec. 2, Ch. 409, L. 2021; amd. Sec. 60, Ch. 503, L. 2021; amd. Sec. 1, Ch. 142, L. 2023.

75-2-104. Limitations — personal cause of action unabridged — venue. (1) This chapter may not be construed to:

(a) grant to the board any jurisdiction or authority with respect to air contamination existing solely within commercial and industrial plants, works, or shops;

(b) affect the relations between employers and employees with respect to or arising out of any condition of air contamination or air pollution;

(c) supersede or limit the applicability of any law or ordinance relating to sanitation, industrial health, or safety; or

(d) abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of a person to damages or other relief on account of injury to persons or property and to maintain an action or other appropriate proceeding.

(2) A judicial challenge to a permit issued pursuant to this chapter by a party other than the permit applicant or permitholder must include the party to whom the permit was issued unless otherwise agreed to by the permit applicant or permitholder. All judicial challenges of permits for projects with a project cost, as determined by the court, of more than $1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action.

(3) An action to challenge a permit decision pursuant to this chapter must be brought in the county in which the permitted activity will occur. If an activity will occur in more than one county, the action may be brought in any of the counties in which the activity will occur.

(4) A judicial action or proceeding pursuant to this chapter for an equine slaughter or processing facility must comply with 81-9-240 and 81-9-241.

History: (1) thru (3)En. Sec. 19, Ch. 313, L. 1967; Sec. 69-3922, R.C.M. 1947; (4)En. Sec. 18, Ch. 313, L. 1967; amd. Sec. 24, Ch. 349, L. 1974; Sec. 69-3921, R.C.M. 1947; R.C.M. 1947, 69-3921(4), 69-3922; amd. Sec. 8, Ch. 361, L. 2003; amd. Sec. 5, Ch. 337, L. 2005; amd. Sec. 4, Ch. 416, L. 2009.

Cross-References

Indemnification for damage to air resources, Title 15, ch. 38.
Workers' compensation — liability, Title 39, ch. 71, part 4.
Workers' compensation — claim, Title 39, ch. 71, part 6.
Montana Clean Indoor Air Act of 1979, Title 50, ch. 40.
Occupational safety and health, Title 50, ch. 71.
Mine safety, Title 50, ch. 72.
Mining operation — preventive measures, 82-4-231.

75-2-105. Confidentiality of records. (1) Records or other information concerning air pollutant sources that are furnished to or obtained by the department are a matter of public record and open to public use. However, any information unique to the owner or operator of an air pollutant source that would, if disclosed, reveal methods or processes entitled to protection as trade secrets must be maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file a declaratory judgment action to establish the existence of a trade secret if the owner or operator wishes the information to enjoy confidential status. The department must be served in the action and may intervene as a party in the action. A trade secret not intended to be public when submitted to the department must be submitted in writing and clearly marked as confidential. However, emission data and operating permits issued by the department pursuant to 75-2-217 through 75-2-219 may not be considered confidential for the purposes of this section.

(2) This section does not prevent the use of records or information by the department in compiling or publishing analyses or summaries relating to the general condition of the

outdoor atmosphere if the analyses or summaries do not identify an owner or operator or reveal information otherwise made confidential by this section.

History: En. Sec. 15, Ch. 313, L. 1967; amd. Sec. 22, Ch. 349, L. 1974; amd. Sec. 1, Ch. 248, L. 1975; R.C.M. 1947, 69-3918; amd. Sec. 2, Ch. 502, L. 1993; amd. Sec. 6, Ch. 324, L. 2021.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.
Uniform Declaratory Judgments Act — procedure, Title 27, ch. 8, part 3.
Uniform Trade Secrets Act, Title 30, ch. 14, part 4.

75-2-106. Repealed. Sec. 2, Ch. 9, L. 2025.

History: En. Sec. 15, Ch. 502, L. 1993.

75-2-107. Small business stationary source technical and environmental compliance assistance program — duties. (1) The department shall establish a small business stationary source technical and environmental compliance assistance program.

(2) The program shall:

(a) provide information to small business stationary sources on compliance methods and technologies, pollution prevention, and accidental release detection and prevention;

(b) assist small business stationary sources in determining applicable requirements under this chapter and in receiving permits in a timely and efficient manner;

(c) provide small business stationary sources timely notice of their rights and obligations under this chapter;

(d) provide information to small business stationary sources regarding the availability of audit services that are useful for determining compliance status with the requirements of this chapter; and

(e) perform other duties as may be necessary to meet the requirements of the federal Clean Air Act, 42 U.S.C. 7401, et seq.

History: En. Sec. 16, Ch. 502, L. 1993.

75-2-108. Small business stationary sources — exceptions — waivers. (1) Upon petition, the department may designate a source to be a small business stationary source for purposes of receiving assistance from the small business stationary source technical and environmental compliance assistance program if the stationary source does not emit more than 100 tons per year of all air pollutants and:

(a) is a major stationary source as defined in Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.;

(b) emits 50 tons or more per year of an air pollutant; or

(c) emits more than 75 tons per year of all air pollutants.

(2) After notice and an opportunity for public comment, the department may grant a petition submitted under subsection (1) upon finding that the source of air pollutants does not have sufficient technical and financial capabilities to meet the requirements of this chapter without the assistance of the small business stationary source technical and environmental compliance assistance program.

(3) After notice and opportunity for public comment, the department may exclude from the definition of small business stationary source in 75-2-103 a category or subcategory of sources that the department determines to have sufficient technical and financial capabilities to meet the requirements of this chapter without the assistance of the small business stationary source technical and environmental compliance assistance program. The department may make this determination only after consulting with the appropriate federal agencies under Subchapter V of the federal Clean Air Act.

History: En. Sec. 17, Ch. 502, L. 1993.

75-2-109. Small business stationary source representative — duties. (1) The department shall establish a small business stationary source representative position that is not located in a regulatory program of the department and not subject to direct supervision by a regulatory program of the department.

(2) The small business stationary source representative shall represent the interests of small business stationary sources before the department and other appropriate local, state, and federal agencies concerning the implementation and application of the requirements of this

chapter. In addition, the representative shall provide assistance to small business stationary sources in meeting the requirements of this chapter. In carrying out these activities, the representative shall:

(a) monitor the activities of the small business stationary source technical and environmental compliance assistance program;

(b) review and provide comments and recommendations to the department, local air pollution control programs, the environmental quality council, as appropriate, and the appropriate federal agencies regarding the development and implementation of regulations pertaining to air quality that impact small business stationary sources;

(c) facilitate and promote the participation of small business stationary sources in the development of new regulations pertaining to air quality that impact small business stationary sources;

(d) assist in the preparation and dissemination of reports and other information regarding the applicability of the requirements of this chapter to small business stationary sources;

(e) assist in the preparation of guideline documents by the small business stationary source technical and environmental compliance assistance program to ensure that these documents are readily understandable by the lay person;

(f) assist small business stationary sources and their trade associations to encourage voluntary compliance with the requirements of this chapter;

(g) cooperate with appropriate local, state, and federal agencies and private sector financial institutions to assist small business stationary sources in locating financial assistance necessary for compliance with the requirements of this chapter;

(h) consult with small businesses and other stakeholders at regular intervals throughout the year regarding problems faced by small business stationary sources concerning the implementation and application of the requirements of this chapter; and

(i) perform other duties as may be necessary to meet the requirements of the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(3) Subject to Article II, section 9, of the Montana constitution, the small business stationary source representative may not provide information that the representative obtains from a small business stationary source to the department for use in any administrative or judicial action to enforce the requirements of this chapter, unless the information discloses a violation that constitutes an imminent and substantial danger to human health, safety, or the environment.

History: En. Sec. 18, Ch. 502, L. 1993; amd. Sec. 1, Ch. 491, L. 2001; amd. Sec. 1, Ch. 9, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 9, L. 2025. Amendment effective October 1, 2025.

75-2-110 reserved.

75-2-111. Powers of board. The board shall:

(1) hold hearings relating to any aspect of or matter in the administration of this chapter at a place designated by the board. The board may compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter who must be present at all hearings and take full stenographic notes of all proceedings, transcripts of which must be available to the public at cost.

(2) issue orders necessary to effectuate the purposes of this chapter;

(3) have the power to issue orders under and in accordance with 42 U.S.C. 7419.

History: En. Sec. 6, Ch. 313, L. 1967; amd. Sec. 17, Ch. 349, L. 1974; R.C.M. 1947, 69-3909(1) thru (4); amd. Sec. 1, Ch. 560, L. 1979; amd. Sec. 1, Ch. 652, L. 1991; amd. Sec. 7, Ch. 471, L. 1995; amd. Sec. 1, Ch. 231, L. 2003; amd. Sec. 1, Ch. 256, L. 2007; amd. Sec. 100, Ch. 2, L. 2009; amd. Sec. 1, Ch. 94, L. 2011; amd. Sec. 7, Ch. 324, L. 2021; amd. Sec. 1, Ch. 249, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 249, L. 2025. Amendment effective May 1, 2025.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

Board of Environmental Review, 2-15-3502.

75-2-112. Powers and responsibilities of department. (1) The department is responsible for the administration of this chapter.

(2) Subject to the provisions of 75-2-207, the department shall:

(a) adopt, amend, and repeal rules for the administration, implementation, and enforcement of this chapter and for fulfilling the requirements of 42 U.S.C. 7420 and regulations adopted pursuant to that section, except that, for purposes other than agricultural open burning, the department may not adopt permitting requirements or any other rule relating to:

(i) any agricultural activity or equipment that is associated with the use of agricultural land or the planting, production, processing, harvesting, or storage of agricultural crops by an agricultural producer and that is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a;

(ii) a commercial operation relating to the activities or equipment referred to in subsection (2)(a)(i) that remains in a single location for less than 12 months and is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a; or

(iii) forestry equipment and its associated engine used for forestry practices that remain in a single location for less than 12 months and are not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a;

(b) issue orders necessary to effectuate the purposes of this chapter;

(c) by rule require access to records relating to emissions; and

(d) by rule adopt a schedule of fees required for permits, permit applications, and registrations consistent with this chapter.

(3) The department shall:

(a) by appropriate administrative and judicial proceedings, enforce orders issued by the department or the board;

(b) secure necessary scientific, technical, administrative, and operational services, including laboratory facilities, by contract or otherwise;

(c) prepare and develop a comprehensive plan for the prevention, abatement, and control of air pollution in this state;

(d) encourage voluntary cooperation by persons and affected groups to achieve the purposes of this chapter;

(e) encourage local units of government to handle air pollution problems within their respective jurisdictions on a cooperative basis and provide technical and consultative assistance for this. If local programs are financed with public funds, the department may contract with the local government to share the cost of the program. However, the state share may not exceed 30% of the total cost.

(f) encourage and conduct studies, investigations, and research relating to air contamination and air pollution and their causes, effects, prevention, abatement, and control;

(g) determine, by means of field studies and sampling, the degree of air contamination and air pollution in the state;

(h) make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere of this state and make recommendations to appropriate public and private bodies with respect to this;

(i) collect and disseminate information and conduct educational and training programs relating to air contamination and air pollution;

(j) advise, consult, contract, and cooperate with other agencies of the state, local governments, industries, other states, interstate and interlocal agencies, the United States, and any interested persons or groups;

(k) consult, on request, with any person proposing to construct, install, or otherwise acquire an air contaminant source or device or system for the control thereof concerning the efficacy of this device or system or the air pollution problems which may be related to the source, device, or system. Nothing in this consultation relieves a person from compliance with this chapter, rules in force under it, or any other provision of law.

(l) accept, receive, and administer grants or other funds or gifts from public or private agencies, including the United States, for the purpose of carrying out this chapter. Funds received under this section shall be deposited in the state treasury to the account of the department.

(4) The department may assess fees to the applicant for the analysis of the environmental impact of an application to redesignate the classification of any area, except those areas within the exterior boundaries of a reservation of a federally recognized Indian tribe, under the classifications established by 42 U.S.C. 7470 through 7479 (prevention of significant deterioration of air quality). The determination of whether or not a fee will be assessed is to be on a case-by-case basis.

History: (1)En. Sec. 4, Ch. 313, L. 1967; amd. Sec. 14, Ch. 349, L. 1974; Sec. 69-3907, R.C.M. 1947; (2)En. 69-3909.1 by Sec. 18, Ch. 349, L. 1974; Sec. 69-3909.1, R.C.M. 1947; R.C.M. 1947, 69-3907, 69-3909.1; (3)En. Sec. 2, Ch. 560, L. 1979; amd. Sec. 8, Ch. 324, L. 2021.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.
Eligibility for state aid, 75-2-302.
Enforcement by Department, 75-2-401.

75-2-113. Terminated. Sec. 5, Ch. 673, L. 1989.

History: En. Sec. 1, Ch. 673, L. 1989.

75-2-114. Terminated. Sec. 5, Ch. 673, L. 1989.

History: En. Sec. 2, Ch. 673, L. 1989.

75-2-115 through 75-2-120 reserved.

75-2-121. Repealed. Sec. 3, Ch. 417, L. 2013.

History: En. Sec. 5, Ch. 313, L. 1967; amd. Sec. 16, Ch. 349, L. 1974; R.C.M. 1947, 69-3908(4).

75-2-122. Repealed. Sec. 3, Ch. 417, L. 2013.

History: En. Sec. 5, Ch. 313, L. 1967; amd. Sec. 16, Ch. 349, L. 1974; R.C.M. 1947, 69-3908(1), (3); amd. Sec. 2489, Ch. 56, L. 2009.

75-2-123. Repealed. Sec. 3, Ch. 417, L. 2013.

History: En. Sec. 5, Ch. 313, L. 1967; amd. Sec. 16, Ch. 349, L. 1974; R.C.M. 1947, 69-3908(2); amd. Sec. 2490, Ch. 56, L. 2009.

75-2-124. Exemptions from environmental review. The department is not required to perform an analysis of greenhouse gas emissions beyond the state's borders under the provisions of Title 75, chapters 1, parts 1 and 2, from any source not subject to state enforcement pursuant to 42 U.S.C. 7543(a) for a new motor vehicle or a new motor vehicle engine and pursuant to 42 U.S.C. 7543(e)(1) for a new nonroad engine or nonroad vehicle.

History: En. Sec. 2, Ch. 505, L. 2025.

Compiler's Comments

Effective Date: This section is effective October 1, 2025.

Cross-References

Department of labor and industry exemption from environmental review, 50-60-124.

Part 2
Standards, Permits, and Variances

Part Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.
Energy emergency — power of Governor to suspend pollution control standards, 90-4-310.

75-2-201. Classifying and reporting air contaminant sources. (1) The department may classify air contaminant sources that in its judgment may cause or contribute to air pollution according to levels and types of emissions and other characteristics that relate to air pollution and may require reporting for any such class or classes. The classifications must be made with special reference to effects on health, economic and social factors, and physical effects on property and may be applied to the state as a whole or to any designated area.

(2) Any person operating or responsible for the operation of air contaminant sources of any class for which the rules of the department may require reporting shall make reports containing any information as may be required concerning location, size and height of contaminant outlets, processes employed, fuels used, and the nature and time periods or duration of emissions and any other matter relevant to air pollution that is available or reasonably capable of being assembled.

History: En. Sec. 7, Ch. 313, L. 1967; R.C.M. 1947, 69-3910; amd. Sec. 9, Ch. 324, L. 2021.

75-2-202. Department to set ambient air quality standards. (1) The department shall establish ambient air quality standards for the state.

(2) Ambient air quality standards for fluorides must be established through limitations upon the concentration of fluorides in forage grasses, hay, and silage.

History: En. Sec. 6, Ch. 313, L. 1967; amd. Sec. 17, Ch. 349, L. 1974; R.C.M. 1947, 69-3909(5); amd. Sec. 1, Ch. 565, L. 1981; amd. Sec. 10, Ch. 324, L. 2021.

Cross-References

Compliance with air standards for facility siting, 75-20-401.

75-2-203. Department to set emission levels. (1) Subject to subsection (2), the department may establish the limitations of the levels, concentrations, or quantities of emissions of various pollutants from any source necessary to prevent, abate, or control air pollution. Except as otherwise provided in or pursuant to this section, those levels, concentrations, or quantities are controlling, and no emission in excess of those levels is lawful.

(2) (a) Except as provided in subsection (2)(b), the department may not fix more stringent requirements governing the emission of air pollutants than the federal standards or limitations established in the federal Clean Air Act for the emission of regulated pollutants.

(b) Subsection (2)(a) does not apply to requirements:

(i) governing the emissions of air pollutants established prior to May 1, 2025; and

(ii) necessary in areas classified as nonattainment, maintenance, or to prevent nonattainment, as approved by the department, to comply with national ambient air quality standards as required in the federal Clean Air Act.

(3) The department may by rule use any widely recognized measuring system for measuring emission of air contaminants.

History: En. Sec. 10, Ch. 313, L. 1967; R.C.M. 1947, 69-3913; amd. Sec. 11, Ch. 324, L. 2021; amd. Sec. 2, Ch. 249, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 249, L. 2025. Amendment effective May 1, 2025.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

75-2-204. Rules relating to construction, installation, alteration, operation, or use. The department may by rule prohibit the construction, installation, alteration, operation, or use of a machine, equipment, device, or facility that it finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, unless the owner or operator obtains a permit under this part or has registered the source of air contaminants with the department if the source is in a category for which only registration is required by the rules adopted to implement this part.

History: En. Sec. 8, Ch. 313, L. 1967; amd. Sec. 1, Ch. 185, L. 1975; amd. Sec. 4, Ch. 140, L. 1977; R.C.M. 1947, 69-3911(1); amd. Sec. 3, Ch. 502, L. 1993; amd. Sec. 2, Ch. 231, L. 2003; amd. Sec. 12, Ch. 324, L. 2021.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

75-2-205. Repealed. Sec. 3, Ch. 417, L. 2013.

History: En. Sec. 14, Ch. 313, L. 1967; amd. Sec. 9, Ch. 140, L. 1977; R.C.M. 1947, 69-3917(1); amd. Sec. 3, Ch. 560, L. 1979.

75-2-206. Study of effects of sulfur dioxide on health and environment. (1) To the extent that funds are available, the department shall conduct an ongoing study in areas of Montana where there are major industrial sources of sulfur dioxide. The study must concentrate on the effects on human health and the environment of ambient sulfur dioxide concentrations separately and in conjunction with particulates.

(2) Notwithstanding other funding sources to pay for the study, the department may accept funds and grants from private and public sources.

History: En. Sec. 2, Ch. 504, L. 1987; amd. Sec. 13, Ch. 324, L. 2021.

75-2-207. State regulations no more stringent than federal regulations or guidelines — exception. (1) Except as provided in subsection (2), the department may not adopt a rule to implement this chapter that is more stringent than the comparable federal

regulations or guidelines that address the same circumstances. The department may incorporate by reference comparable federal regulations or guidelines.

(2) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1).

History: En. Sec. 2, Ch. 471, L. 1995; amd. Sec. 1, Ch. 536, L. 2001; amd. Sec. 14, Ch. 324, L. 2021; amd. Sec. 3, Ch. 249, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 249, L. 2025. Amendment effective May 1, 2025.

75-2-208 through 75-2-210 reserved.

75-2-211. Permits for construction, installation, alteration, or use. (1) The department shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

(2) (a) Except as provided in 75-1-208(4)(b), 75-2-234, and subsections (2)(b) and (2)(c) of this section, not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the department finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department.

(b) Except as provided in subsection (2)(e), the owner or operator of an oil or gas well facility shall file the permit application with the department no later than January 3, 2006, or 60 days after the initial well completion date, whichever is later. For purposes of this section, the initial well completion date for an oil or gas well facility is:

(i) for an oil or gas well facility producing oil, the date when the first oil is produced through wellhead equipment into lease tanks from the ultimate producing interval after casing has been run; and

(ii) for an oil or gas well facility producing gas, the date when the oil or gas well facility is capable of producing gas through wellhead equipment from the ultimate producing interval after casing has been run.

(c) An owner or operator who complies with subsection (2)(b) may construct, install, or use equipment necessary to complete or operate an oil or gas well facility without a permit until the department's decision on the application is final. If the owner or operator does not comply with subsection (2)(b), the owner or operator may not operate the oil or gas well facility and is liable for a violation of this section for every day of construction, installation, or operation of the facility.

(d) The department shall adopt rules establishing air emission control requirements applicable to an oil or gas well facility during the time from the initial well completion date until the department's decision on the application is final.

(e) The provisions of subsections (2)(b) and (2)(c) do not apply to an oil or gas well facility subject to the federal air permitting provisions of 42 U.S.C. 7475 or 7503.

(3) The permit program administered by the department pursuant to this section must include the following:

(a) requirements and procedures for permit applications, including standard application forms;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring, recordkeeping, and reporting;

(f) procedures for the transfer of permits;

(g) requirements and procedures for suspension, modification, and revocation of permits by the department;

(h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(i) requirements and procedures for permit modification and amendment; and

(j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

(4) This section does not restrict the department's authority to adopt regulations providing for a single air quality permit system.

(5) Department approval of an application to transfer a portable emission source from one location to another is exempt from the provisions of 75-1-201(1).

(6) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(7) The department shall require that applications for permits be accompanied by any plans, specifications, and other information that it considers necessary.

(8) An application is not considered filed until the applicant has submitted all fees required under 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7) of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(9) (a) Except as provided in 75-1-205(4) and 75-1-208(4)(b), if an application for a permit requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application:

(i) within 180 days after the department's receipt of a filed application, as provided in subsection (8), if the department prepares the environmental impact statement;

(ii) within 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement; or

(iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a permit under Title 82, chapter 4, part 1, 2, or 3, within 30 days of issuance of the final environmental impact statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

(b) If an application does not require the preparation of an environmental impact statement, is not subject to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661a, the department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application, except as provided in subsection (14).

(c) If an application does not require the preparation of an environmental impact statement and is subject to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661a, the department shall notify the applicant, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application.

(d) Except as provided in subsection (9)(e), if an application does not require the preparation of an environmental impact statement and is subject to the provisions of 75-2-215, the department shall notify the applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8).

(e) If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall prepare a single environmental review document pursuant to Title 75, chapter 1, for the permit required under this section and the license or permit required under 75-10-221 or 75-10-406 and act on the applications within the time period provided for in 75-2-215(3)(e).

(f) The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department upon the request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.

(g) Failure by the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(10) Except as provided in 75-2-213, when the department approves or denies the application for a permit under this section, a person who is directly and adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision. An affidavit setting forth the grounds for the request must be filed within 30 days after the department renders its decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(11) Except as provided in 75-2-213:

(a) the department's decision on the application is not final until 15 days have elapsed from the date of the decision;

(b) the filing of a request for hearing does not stay the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

(i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

(ii) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.

(c) upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

(12) The department shall provide, by rule, a period of 30 days in which the public may submit comments on draft air quality permits for applications that:

(a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661a;

(b) are subject to the requirements of 75-2-215; or

(c) require the preparation of an environmental impact statement.

(13) The department shall provide, by rule, a period of 15 days in which the public may submit comments on draft air quality permits not subject to subsection (12).

(14) The department shall provide, by rule, the basis upon which the department may extend by 15 days:

(a) the period as provided in subsection (13) in which the public may submit comments on draft air quality permits not subject to subsection (12); and

(b) the period for notifying an applicant of its final decision on approval or denial of an application, as provided in subsection (9)(b).

(15) (a) The department may adopt rules for issuance, modification, suspension, revocation, renewal, or creation of:

(i) general permits covering multiple similar sources; or

(ii) other permits covering multiple similar sources.

(b) Rules adopted pursuant to subsection (15)(a) may provide for construction and operation under the permit upon authorization by the department or upon notice to the department.

History: En. Sec. 8, Ch. 313, L. 1967; amd. Sec. 1, Ch. 185, L. 1975; amd. Sec. 4, Ch. 140, L. 1977; R.C.M. 1947, 69-3911(part); amd. Sec. 4, Ch. 560, L. 1979; amd. Sec. 1, Ch. 196, L. 1983; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 652, L. 1991; amd. Sec. 4, Ch. 502, L. 1993; amd. Sec. 2, Ch. 639, L. 1993; amd. Sec. 1, Ch. 85, L. 1995; amd. Sec. 1, Ch. 273, L. 1997; amd. Sec. 1, Ch. 221, L. 1999; amd. Sec. 4, Ch. 299, L. 2001; amd. Sec. 1, Ch. 588, L. 2001; amd. Sec. 1, Ch. 99, L. 2003; amd. Sec. 3, Ch. 231, L. 2003; amd. Sec. 1, Ch. 188, L. 2005; amd. Sec. 2, Ch. 236, L. 2005; amd. Sec. 6, Ch. 337, L. 2005; amd. Sec. 101, Ch. 2, L. 2009; amd. Sec. 5, Ch. 445, L. 2009; amd. Sec. 15, Ch. 324, L. 2021.

Cross-References

Montana Administrative Procedure Act — contested cases, Title 2, ch. 4, part 6.

Air pollution control equipment — determination of use for tax purposes, 15-6-135.

Fund structure, 17-2-102.

Environmental impact statement, 75-1-201.

Requirement that siting of facility includes air permit — application — decision, 75-20-211, 75-20-401.

Dairy products manufacturing plant — approval of air pollutant control by Department of Environmental Quality, 81-22-403.

75-2-212. Variances — renewals — filing fees. (1) A person who owns or is in control of a plant, building, structure, process, or equipment may apply to the department for an exemption or partial exemption from rules governing the quality, nature, duration, or extent of emissions of air pollutants. The application must be accompanied by information and data that the department may require. The department may grant an exemption or partial exemption if it finds that:

(a) the emissions occurring or proposed to occur do not constitute a danger to public health or safety; and

(b) compliance with the rules from which an exemption is sought would produce hardship without equal or greater benefits to the public.

(2) An exemption or partial exemption may not be granted pursuant to this section except after public hearing on due notice and until the department has considered the relative interests of the applicant, other owners or property likely to be affected by the emissions, and the general public.

(3) The exemption or partial exemption may be renewed if a complaint is not made to the department because of it or if, after the complaint has been made and duly considered at a public hearing held by the department on due notice, the department finds that renewal is justified. A renewal may not be granted except on application. An application must be made at least 60 days before the expiration of the exemption or partial exemption. Immediately before application for renewal, the applicant shall give public notice of the application in accordance with rules of the department. A renewal pursuant to this subsection must be on the same grounds and subject to the same limitations and requirements as provided in subsection (1).

(4) An exemption, partial exemption, or renewal is not a right of the applicant or holder but may be granted at the discretion of the department. However, a person adversely affected by an exemption, partial exemption, or renewal granted by the department may obtain judicial review as provided by 75-2-411.

(5) This section and an exemption, partial exemption, or renewal granted pursuant to this section may not be construed to prevent or limit the application of the emergency provisions and procedures of 75-2-402 to a person or the person's property.

(6) A person who owns or is in control of a plant, building, structure, process, or equipment, which are called facilities, who applies to the department for an exemption or partial exemption or a renewal of an exemption or partial exemption from a rule governing the quality, nature, duration, or extent of emissions of air pollutants shall submit with the application for variance a sum of not less than $500 or 2% of the cost of the equipment to bring the facility into compliance with the rule for which a variance is sought, whichever is greater, but not to exceed $80,000. The department shall prepare a statement of actual costs, and funds in excess of this must be returned to the applicant. The person requesting the variance shall describe the facility in sufficient detail, with accompanying estimates of cost and verifying materials, to permit the department to determine with reasonable accuracy the sum of the fee. For a renewal of an exemption or partial exemption, if a public hearing, environmental impact statement, or appreciable investigation by the department is not necessary, the minimum filing fee applies or the fee may be waived by the department. The filing fee must be deposited in the state special revenue fund provided for in 17-2-102. It is the intent of the legislature that the revenue derived from the filing fees must be used by the department to:

(a) compile the information required for rendering a decision on the request;

(b) compile the information necessary for any environmental impact statements;

(c) offset the costs of a public hearing, printing, or mailing; and

(d) carry out its other responsibilities under this chapter.

History: En. Sec. 13, Ch. 313, L. 1967; amd. Sec. 1, Ch. 186, L. 1975; amd. Sec. 8, Ch. 140, L. 1977; R.C.M. 1947, 69-3916; amd. Sec. 1, Ch. 265, L. 1983; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2491, Ch. 56, L. 2009; amd. Sec. 16, Ch. 324, L. 2021.

75-2-213. Energy development project — hearing and procedures. (1) (a) When the department approves or denies the application for a permit under 75-2-211 for an energy development project, the applicant or a person who has provided the department with formal comments and who is directly and adversely affected by the department's decision may request a hearing before the board. If the department provided an opportunity for public comment on the application, the request for a hearing must be limited to those issues raised in comments made to the department during the comment period unless the issues are related to a material change in federal or state law made during the comment period, to a judicial decision issued after the comment period, or to a material change to the draft permit, which was submitted for public comment, made by the department in the final permit decision and upon which the public did not have a meaningful opportunity to comment. The request for hearing must be filed within 30 days after the department renders its decision. An affidavit setting forth the grounds for the request must be filed with the request for a hearing.

(b) (i) If a hearing is requested by a person other than the applicant for or permittee of an energy development project, the applicant or permittee may, by filing a written election with the board within 15 days of receipt of the request for hearing, elect to have the matter proceed to hearing before the board or to have the matter submitted directly to the district court for judicial review of the agency decision. The party who requests the hearing may elect to have the matter submitted either to the board for a hearing or to the district court for judicial review by submitting a written election to the board with the request for hearing. If there are conflicting elections between the parties, the matter must proceed to district court.

(ii) If the applicant or permittee is not the person who requested the hearing and has elected to have the matter submitted to the district court, the person who submitted the request for a hearing shall file a petition for review of the permit decision within 15 days of receipt of notice from the permittee. If the person who requested the hearing has elected to have the matter proceed to district court, that person shall file a petition in district court within 15 days of filing the request.

(iii) The petition must be limited to matters raised in the request for hearing and must be filed in the county in which the facility is located.

(iv) If a party does not elect to submit the matter directly to district court, the matter must proceed through the contested case process before the board pursuant to the Montana Administrative Procedure Act.

(v) The board or the district court shall apply the laws and rules in place when the department issued its decision, and the board or the district court may not consider any issue that was not presented to the department for the department's consideration during the formal comment period unless the issue is related to a material change in federal or state law made during the comment period, to a judicial decision issued after the comment period, or to a material change to the draft permit, which was submitted for public comment, made by the department in the final permit decision and upon which the public did not have a meaningful opportunity to comment.

(c) (i) Except as provided in subsection (1)(c)(ii), if the person requesting the hearing is not the applicant or permittee of an energy development project, the board or the district court shall require a written undertaking to be given by the party requesting the hearing for the payment of costs and damages incurred by the permit applicant and its employees if the request for a hearing or judicial review was for an improper purpose designed to harass, cause unnecessary delay, or improperly interfere with the issuance of the permit without a reasonable basis in law or fact.

(ii) The board or the district court may not require a written undertaking if the party requesting the hearing is an indigent person.

(d) If grounds for requesting the hearing are based on alleged error in applying best available control technology requirements, the board or the district court shall give deference to the best available control technology determination made by the department. The board or the district court may not reject the best available control technology determination unless the determination was incorrect as a matter of law or the factual basis for the determination was clearly erroneous.

(2) The board shall issue a final decision within 4 months from the close of the hearing on the merits or, if no hearing is held, within 3 months from the date that briefing by the parties is complete unless the applicant or permittee and the party other than the applicant or permittee agree in writing to an extension of time. The board shall require the parties to prepare the case for hearing without unreasonable delay.

(3) (a) Any requirement in a permit to commence construction, installation, or alteration within a certain time period is tolled during a contested case or judicial review proceeding, but not by more than 12 months, unless the applicant or permittee in its discretion waives the tolling in writing.

(b) If there are multiple appeals of one permit, tolling under this subsection (3) may not exceed a total of 12 months for all appeals.

(c) The applicant may not engage in construction during the period that the time period is tolled under subsection (3)(a).

(4) The department shall, for good cause shown, waive for up to 1 year any requirement that construction of an energy development project must proceed with due diligence. During the period that a waiver is in effect, an air quality permit does not expire because construction of an energy development project failed to proceed with due diligence.

History: En. Sec. 1, Ch. 445, L. 2009.

75-2-214 reserved.

75-2-215. Solid or hazardous waste incineration — additional permit or registration requirements. (1) Except as provided in subsection (2), until the department issues an air quality permit pursuant to 75-2-211 or a registration in accordance with rules adopted pursuant to 75-2-234 that includes the conditions required by this section, a person may not construct, install, alter, or use:

(a) a solid or hazardous waste incinerator; or

(b) a boiler or industrial furnace subject to the provisions of 75-10-406.

(2) An existing or permitted solid or hazardous waste incinerator or a boiler or industrial furnace subject to the provisions of 75-10-406 is subject to the provisions of subsection (1) only if it incinerates or uses as fuel or would incinerate or use as fuel solid or hazardous waste in an amount, form, kind, or content that changes the nature, character, or composition of its emissions from its design or permitted operation.

(3) The department may not issue a permit or registration to a facility described in subsection (1) until:

(a) the owner or operator provides to the department's satisfaction:

(i) a characterization of emissions and ambient concentrations of air pollutants, including hazardous air pollutants, from any existing emission source at the facility; and

(ii) an estimate of emissions and ambient concentrations of air pollutants, including hazardous air pollutants, from the incineration of solid or hazardous waste or the use of hazardous waste as fuel for a boiler or industrial furnace, as proposed in the registration, permit application, or permit modification;

(b) if a license is required pursuant to 75-10-221 or a permit is required pursuant to 75-10-406, the applicant has published, in the county where the project is proposed, at least three notices, in accordance with the procedures identified in 7-1-4127, describing the proposed project;

(c) if a license is required pursuant to 75-10-221 or a permit is required pursuant to 75-10-406, the department has conducted a public hearing on an environmental review prepared pursuant to Title 75, chapter 1, and, as appropriate, provided additional opportunities for the public to review and comment on the permit application or permit modification;

(d) except as provided in subsection (7), the department reaches a determination that the projected emissions and ambient concentrations will constitute a negligible risk to the public health, safety, and welfare and to the environment; and

(e) the department issues a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, if a license or permit is required. The decision to issue, deny, or alter a permit pursuant to 75-2-211 and this section must be made within 30 days from when the department

issues a license pursuant to 75-10-221 or a permit pursuant to 75-10-406 or within 90 days after the receipt of a complete application for a permit or a permit alteration under 75-2-211 and this section, whichever is later.

(4) The department shall require the application of air pollution control equipment, engineering, or other operating procedures as necessary to provide reductions of air pollutants, including hazardous air pollutants, equivalent to or more stringent than those achieved through the best available control technology.

(5) The department may by rule provide for general air quality permits under the provisions of 75-2-211 and this section. The rules must cover numerous similar classes or categories of incinerators and boilers or industrial furnaces.

(6) This section does not relieve an owner or operator of a solid or hazardous waste incinerator or a boiler or industrial furnace that is not included under subsection (1) from the obligation to obtain any permit otherwise required under this chapter or rules implementing this chapter.

(7) An animal or human crematorium eligible for registration under 75-2-234 is exempt from the determination requirement established in subsection (3)(d).

History: En. Sec. 5, Ch. 696, L. 1989; amd. Sec. 1, Ch. 605, L. 1991; amd. Sec. 2, Ch. 129, L. 1993; amd. Sec. 3, Ch. 639, L. 1993; amd. Sec. 69, Ch. 354, L. 2001; amd. Sec. 17, Ch. 324, L. 2021; amd. Sec. 2, Ch. 142, L. 2023.

75-2-216. Adoption of rules for solid or hazardous waste incinerator permits. The department shall proceed in a reasonable and timely manner in adopting rules implementing 75-2-215.

History: En. Sec. 1, Ch. 16, Sp. L. July 1992; amd. Sec. 16, Ch. 112, L. 1997.

75-2-217. Operating permit program — exemptions — general requirements — duration. (1) The department shall provide by rule for the issuance, expiration, modification, amendment, suspension, revocation, and renewal of operating permits as part of an operating permit program to be administered by the department under this chapter. The department shall promulgate rules that are consistent with the operating permit framework and guidelines outlined in Subchapter V of the federal Clean Air Act and implementing regulations.

(2) This section applies to all sources of air pollutants that are subject to the provisions of Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.

(3) A person may not violate any requirement of an operating permit issued under 75-2-218 and this section or operate any source required to have a permit under this section without having complied with the requirements of the operating permit program administered by the department pursuant to 75-2-218, 75-2-219, and this section.

(4) The department may by rule provide for the exemption of one or more source categories, in whole or in part, from all or part of the requirements of this section if the department determines that compliance with the requirements of this section is impracticable, infeasible, or unnecessarily burdensome for the sources. The department may premise this determination upon a similar determination by the appropriate federal agency acting pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(5) The department may by rule provide for general operating permits covering numerous similar sources.

(6) An operating permit issued by the department under 75-2-218 and this section is effective for a period not to exceed 5 years and may be renewed.

(7) The operating permit program administered by the department pursuant to this section must include the following:

(a) adequate procedures that are streamlined and reasonable for:

(i) expeditiously determining when applications are complete;

(ii) processing applications; and

(iii) expeditiously reviewing permit actions, including application renewals or revisions;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring, recordkeeping, compliance certification, and reporting;

(f) deadlines for submitting permit applications and compliance plans that are not later than 12 months after the source becomes subject to the operating permit requirement;

(g) deadlines for submitting permit renewal applications that are not later than 6 months before expiration of the existing operating permit;

(h) requirements for compliance plans that must be submitted with permit and renewal applications, including schedules of compliance and progress reports;

(i) requirements and procedures for periodic certification of source compliance with permit requirements, including the prompt reporting of any deviations from permit requirements;

(j) requirements for submission of any plans, specifications, or other information that the department considers necessary under this section;

(k) conditions and procedures for the transfer of operating permits;

(l) requirements and procedures for suspension, modification, amendment, and revocation of permits by the department for cause, including the modification or amendment of permits before renewal or termination to incorporate applicable limitations or requirements effective after permit issuance;

(m) requirements and procedures for incorporating into permits and permit renewals all applicable emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(n) requirements and procedures for permit modification and amendment;

(o) procedures for tracking activities conducted under general permits;

(p) requirements and procedures for issuing a single operating permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location;

(q) requirements and procedures for allowing changes within a permitted facility without requiring a permit amendment if the changes are not prohibited under this chapter and do not exceed the emissions allowable under the permit; and

(r) other requirements necessary for the department to obtain the authorization to administer an operating permit program under the provisions of Subchapter V of the federal Clean Air Act.

History: En. Sec. 9, Ch. 502, L. 1993; amd. Sec. 18, Ch. 324, L. 2021.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

75-2-218. Permits for operation — application completeness — action by department — application shield — review by board. (1) An application for an operating permit or renewal is not considered filed until the department has determined that it is complete. An application is complete if all fees required under 75-2-220 and all information and completed application forms required under 75-2-217 have been submitted. A complete application must contain all of the information required for the department to begin processing the application. If the department fails to notify the applicant in writing within 60 days after submittal of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed on the date of the department's receipt of the application. The department may request additional information after a completeness determination has been made. The department shall adopt rules that contain criteria for use in determining both when an application is complete and when additional information is required after a completeness determination has been made.

(2) Except as provided in 75-1-208(4)(b) and subsection (3) of this section, the department shall, consistent with the procedures established under 75-2-217, approve or disapprove a complete application for an operating permit or renewal and shall issue or deny the permit or renewal within 18 months after the date of filing. Failure of the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(3) The department may by rule provide for a transition schedule for both the submittal to the department of initial applications for operating permits by existing sources and action by the department on these initial permit applications. The department may require that one-third of all operating permit applications required for existing sources be submitted within the first calendar year after the adoption of rules implementing an operating permit program under 75-2-217.

(4) If an applicant submits a timely and complete application for an operating permit, the applicant's failure to hold a valid operating permit is not a violation of 75-2-217. If an applicant submits a timely and complete application for an operating permit renewal, the expiration of the applicant's existing operating permit is not a violation of 75-2-217. The applicant shall continue to be subject to the terms and conditions of the expired operating permit until the operating permit is renewed and is subject to the application of 75-2-217. The applicant is not entitled to the protection of this subsection if the delay in final action by the department on the application results from the applicant's failure to submit in a timely manner information requested by the department to process the application.

(5) Except as provided in subsection (8), if the department approves or denies an application for an operating permit or the renewal, modification, or amendment of a permit under 75-2-217 and this section, any person that participated in the public comment process required under 75-2-217(7) may request a hearing before the board. The request for a hearing must be filed within 30 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing under this subsection.

(6) (a) Except as provided in subsection (8), the department's decision on any application is not final until 30 days have elapsed from the date of the decision.

(b) Except as provided in subsection (8), the filing of a request for hearing does not stay the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for an informal hearing, that:

(i) the person requesting the hearing is entitled to the relief demanded in the request for a hearing; or

(ii) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the hearing.

(c) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

(7) The requirements of subsections (5) and (6) also apply to any action initiated by the department to suspend, revoke, modify, or amend an operating permit issued under this section.

(8) The denial by the department of an application under 75-2-217 and this section is not subject to review by the board or judicial review if the basis for denial is the written objection of the appropriate federal agency acting pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(9) Compliance with an operating permit granted or renewed under 75-2-217 and this section is considered to be compliance with the requirements of this chapter only if the permit expressly includes those requirements or an express determination that those requirements are not applicable. This subsection does not apply to general permits provided for under 75-2-217.

History: En. Sec. 10, Ch. 502, L. 1993; amd. Sec. 5, Ch. 299, L. 2001; amd. Sec. 2, Ch. 491, L. 2001; amd. Sec. 4, Ch. 231, L. 2003; amd. Sec. 3, Ch. 236, L. 2005; amd. Sec. 19, Ch. 324, L. 2021.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

75-2-219. Permits for operation — limitations. Sections 75-2-217 and 75-2-218 may not be construed to:

(1) affect the department's issuance of a permit for the construction, installation, alteration, or use of a source of air pollutants pursuant to 75-2-211 or 75-2-215;

(2) restrict the department's authority to adopt regulations providing for a single air quality permit system; or

(3) affect permits, allowances, phase II compliance schedules, or other acid rain provisions under Subchapter IV of the federal Clean Air Act, 42 U.S.C. 7651, et seq.

History: En. Sec. 11, Ch. 502, L. 1993; amd. Sec. 20, Ch. 324, L. 2021.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

75-2-220. Fees — special assessments — late payment assessments — credit. (1) A person required to obtain a permit or to register a facility pursuant to this chapter shall submit to the department fees set pursuant to 75-2-112 that are sufficient to cover the reasonable costs, direct and indirect, of developing and administering the permitting or registration requirements in this chapter, including:

(a) reviewing and acting upon a permit application or a registration or modifying, amending, or updating a permit or registration;

(b) implementing and enforcing the terms and conditions of a permit issued pursuant to this chapter or an administrative rule or other regulatory requirement adopted pursuant to this chapter. This does not include any court costs or other costs associated with an enforcement action. If the permit is not issued, the department shall return this portion of the fee to the applicant.

(c) emissions and ambient monitoring;

(d) preparing generally applicable rules or guidance;

(e) modeling, analysis, and demonstrations;

(f) preparing inventories and tracking emissions;

(g) providing support to sources under the small business stationary source technical and environmental compliance assistance program; and

(h) all other costs required to be recovered pursuant to Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.

(2) For a permit or registration fee based on emissions, the fee must be based on emissions of air pollutants regulated under this chapter, including but not limited to volatile organic compounds, each air pollutant regulated under section 7411 or 7412 of the federal Clean Air Act, 42 U.S.C. 7401, et seq., and each air pollutant subject to a national primary ambient air quality standard.

(3) The department shall by rule provide for the annual review of all fees assessed for persons holding an operating permit issued under 75-2-217 and 75-2-218 to ensure the collection of revenue sufficient to cover the costs of administering the operating permit requirements of this chapter, as required by Subchapter V of the federal Clean Air Act.

(4) In addition to the fees required under subsection (1), the department may order the assessment of additional fees required to fund specific activities of the department that are directed at a particular geographic area if the legislature authorizes the activities and appropriates funds for the activities, including emissions or ambient monitoring, modeling analysis or demonstrations, and emissions inventories or tracking. Additional assessments may be levied only on those sources that are within or are believed by the department to be impacting the geographic area. Before the department may require the fees, it shall first determine, after opportunity for hearing, that the activities to be funded are necessary for the administration or implementation of this chapter, that the amount of the requested fees is appropriate, that the assessments apportion the required funding in an equitable manner, and that the department has obtained the necessary appropriation. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the department under this subsection.

(5) (a) If the permitholder or registrant fails to pay in a timely manner a fee required under subsection (1), in addition to the fee, the department may:

(i) impose a penalty not to exceed 50% of the fee, plus interest on the required fee computed as provided in 15-1-216; or

(ii) revoke the permit or registration consistent with those procedures established under this chapter for permit revocation.

(b) Within 1 year of revocation, the department may reissue the revoked permit or registration after the permitholder or registrant has paid all outstanding fees required under subsections (1) and (4), including all penalties and interest provided for under this subsection

(5). In reissuing the revoked permit, the department may modify the terms and conditions of the permit as necessary to account for changes in air quality occurring since revocation.

(c) The department shall by rule provide for the implementation of this subsection (5), including criteria for imposition of the sanctions described in this subsection (5).

(6) The department may by rule allow the reduction of a fee required under this section for an operating permit or permit renewal to account for the financial resources of a category of small business stationary sources.

(7) As a condition of the continuing validity of a permit issued by the department under this chapter prior to October 1, 1993, the department may by rule require the permitholder to pay the fees under subsections (1) and (4).

(8) For an existing source of air pollutants that is subject to Subchapter V of the federal Clean Air Act and that is not required to hold an air quality permit from the department as of October 1, 1993, the department may, as a condition of continued operation, require by rule that the owner or operator of the source pay the fees under subsections (1) and (4).

(9) (a) The department shall give written notice of the fee to be assessed and the basis for the department's fee assessment under this section to the owner or operator of the air pollutant source. The owner or operator may appeal the department's fee assessment to the board within 20 days after receipt of the written notice.

(b) An appeal must be based upon the allegation that the fee assessment is erroneous or excessive. An appeal may not be based on the amount of the fee contained in the schedule adopted by the department.

(c) If any part of the fee assessment is not appealed, it must be paid to the department upon receipt of the notice required in subsection (9)(a).

(d) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection (9).

(10) The total of the fees charged to an applicant under subsections (1) and (4) of this section must be reduced by the amount of any credit accruing to the applicant under 75-2-225. The department may not increase fee assessments beyond legislative appropriation levels to adjust for any credit claimed under 75-2-225. The credit applied under 75-2-225 may not limit the department's ability to collect fees sufficient to cover the reasonable costs, both direct and indirect, of developing and administering the permitting and registration requirements of this chapter.

History: En. Sec. 12, Ch. 502, L. 1993; amd. Sec. 5, Ch. 51, L. 1997; amd. Sec. 53, Ch. 427, L. 1999; amd. Sec. 5, Ch. 516, L. 2001; amd. Sec. 1, Ch. 339, L. 2015; amd. Sec. 21, Ch. 324, L. 2021.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

75-2-221. Deposit of air quality permitting and registration fees. (1) All money collected by the department pursuant to 75-2-112 and 75-2-220 must be deposited in an account in the state special revenue fund to be appropriated by the legislature to the department for the development and administration of the permitting and registration requirements of this chapter.

(2) Upon request, the expenditure by the department of funds in this account may be audited by a qualified auditor at the end of each fiscal year. The cost of the audit must be paid by the person requesting the audit.

History: En. Sec. 13, Ch. 502, L. 1993; amd. Sec. 2, Ch. 221, L. 1999; amd. Sec. 5, Ch. 231, L. 2003; amd. Sec. 2, Ch. 339, L. 2015; amd. Sec. 22, Ch. 324, L. 2021.

75-2-222 and 75-2-223 reserved.

75-2-224. Definitions. For the purposes of 75-2-224 through 75-2-227, unless otherwise required by the context, the following definitions apply:

(1) "Applicant" means a person submitting a permit application for which the person is required to pay a fee under 75-2-220 and includes a permitholder who pays an annual fee.

(2) "Postconsumer glass" means glass or glass-like material that has:

(a) served its final intended use;

(b) been discarded by an individual, commercial enterprise, or other entity after having fulfilled its intended application or use in Montana;

(c) useful physical or chemical properties remaining after having served a specific purpose and that would normally be disposed of as solid waste, as defined in 75-10-203, by a consumer, processor, or manufacturer.

(3) (a) "Recycled material" means a substance, compound, conglomeration, mixture, or the like that is composed, in whole or in part, of postconsumer glass.

(b) Material that contains postconsumer glass is recycled material for the purposes of this section if the postconsumer glass is used as or is a component of:

(i) fill, aggregate, or surface material used in construction or road construction;

(ii) sandblasting material;

(iii) landscaping material; or

(iv) a sandstone replacement in the manufacture of cement.

(c) The uses included in subsection (3)(b) are not exclusive, and other uses of postconsumer glass as a substitute for the use or consumption of new material may also be considered by the department as recycled material.

History: En. Sec. 1, Ch. 516, L. 2001.

75-2-225. Amount and duration of credit — how claimed. (1) An applicant may receive a credit against the fees imposed in 75-2-220 for using postconsumer glass in recycled material if the applicant qualifies under 75-2-226.

(2) An applicant qualifying for a credit under 75-2-226 is entitled to claim a credit, as provided in subsection (3) of this section, for using postconsumer glass in recycled material in the calendar year subsequent to the calendar year in which the postconsumer glass was used in recycled material.

(3) (a) The amount of the credit that may be claimed under this section is $8 for each ton of postconsumer glass that was used as a substitute for nonrecycled material in the calendar year prior to the calendar year for which the applicant is paying fees for permits under 75-2-220.

(b) The maximum credit allowable in any calendar year for fees payable under 75-2-220 is $2,000 or the total amount of fees due, whichever is less.

History: En. Sec. 2, Ch. 516, L. 2001; amd. Sec. 1, Ch. 129, L. 2005; amd. Sec. 1, Ch. 159, L. 2009.

75-2-226. Credit for use of postconsumer glass. (1) The following requirements must be met for an applicant to be entitled to a credit for the use of postconsumer glass:

(a) The postconsumer glass must have been used in recycled material in the calendar year prior to the calendar year in which the applicant is applying for and paying for permits under 75-2-220.

(b) (i) The applicant claiming a credit must be a person who, as an owner, including a contract purchaser or lessee, or who pursuant to an agreement owns, leases, or has a beneficial interest in a business that uses postconsumer glass in recycled materials. The use of postconsumer glass as recycled material may be a minor or nonprofit part of a business otherwise engaged in a business activity.

(ii) The applicant may but need not operate or conduct a business that uses postconsumer glass as recycled material. If more than one person has an interest in a business with qualifying uses of postconsumer glass, they may allocate all or any part of the allowable credit among themselves and their successors or assigns.

(c) The business must have been owned or leased by the applicant claiming the credit during the calendar year prior to the calendar year for which the permit fees are due under 75-2-220, except as otherwise provided in subsection (1)(b), and must have used postconsumer glass in recycled material during the calendar year prior to the calendar year for which the credit is claimed.

(d) The postconsumer glass used in recycled material may not be an industrial waste generated by the person claiming the credit unless:

(i) the person generating the waste historically has disposed of the waste onsite or in a licensed landfill; and

(ii) standard industrial practice has not generally included the reuse of the waste in the manufacturing process.

(2) The credit provided by this section is not in lieu of any other incentive to which the applicant otherwise may be entitled under Title 15 or this chapter.

(3) A credit otherwise allowable under this section that is not used by the applicant in the calendar year for which the permits are applied may not be:

(a) carried forward to offset an applicant's permit fees for any succeeding calendar year; or

(b) carried back to offset an applicant's permit fees for any preceding calendar year.

History: En. Sec. 3, Ch. 516, L. 2001; amd. Sec. 2, Ch. 129, L. 2005; amd. Sec. 2, Ch. 159, L. 2009.

75-2-227. Postconsumer glass qualifying for credit — rulemaking. (1) The department shall adopt rules describing postconsumer glass and recycled material that qualify for the credit authorized by 75-2-226.

(2) In addition to the public participation provisions of Title 2, chapter 4, the department shall maintain a register of interested persons and experts in the field of recycling postconsumer glass. The department shall mail a notice to the interested persons identified under this subsection of the department's contemplated actions, soliciting their views on possible solutions or courses of action.

History: En. Sec. 4, Ch. 516, L. 2001.

Cross-References

Interested persons' rulemaking notice, 2-4-302.

75-2-228 and 75-2-229 reserved.

75-2-230. Commercial hazardous waste incinerators — additional permit requirements. (1) In addition to the requirements under 75-2-231, the department shall require the owner or operator of an existing commercial hazardous waste incinerator or an applicant for an air quality permit for a commercial hazardous waste incinerator to submit a plan that requires the cessation of the burning of hazardous waste if site-specific monitoring determines that inversion conditions, as defined by department rule, exist. The department shall consider the proximity of the commercial hazardous waste incinerator to populated areas when determining the appropriate plan content. The plan must include a site-specific ambient air quality and meteorological monitoring program in order to establish the conditions under which the burning of commercial hazardous waste must be halted and conditions under which the burning of commercial hazardous waste may be resumed. Conditions of the plan must be incorporated as a condition of the facility's permit.

(2) When, because of the proximity of a commercial hazardous waste incinerator to populated areas, the department determines that continuing monitoring is appropriate, the department shall require the owner or operator of an existing commercial hazardous waste incinerator or an applicant for an air quality permit for a commercial hazardous waste incinerator to provide telemetering service to the department with an immediate notification system activated when emissions approach or exceed permitted limits.

History: En. Sec. 1, Ch. 498, L. 1995.

75-2-231. Medical waste and hazardous waste incineration — additional permit requirements. (1) Because of the potential emission of chlorinated dioxins, furans, heavy metals, and carcinogens as a result of the incineration of medical waste and hazardous waste and the potential health risk these chemicals pose, the department shall adopt rules establishing additional permit requirements for commercial medical waste and commercial hazardous waste incinerators. For the purposes of this section, the term "commercial medical waste incinerator" does not include hospital or medical facility incinerators that primarily incinerate medical waste generated onsite. The department shall adopt rules that:

(a) regulate the type and amount of plastic and other materials in the medical waste stream and hazardous waste stream that may be a source of chlorine, in order to minimize the potential emission of chlorinated dioxins, furans, and carcinogens;

(b) require commercial medical waste and commercial hazardous waste incinerators to achieve the lowest achievable emission rate to prevent the public health risk from air emissions or ambient concentrations from exceeding the negligible risk standard required by 75-2-215 and any applicable federal allowable intake standards, as determined pursuant to subsection (3), for dioxins, furans, heavy metals, and other hazardous air pollutants;

(c) implement the requirements of subsection (2), including establishing procedures and standards for the collection of high-quality scientific information and for the submission of the information by the applicant;

(d) establish procedures for the monitoring, testing, and inspection of:

(i) the medical waste stream and hazardous waste stream, including heavy metals and possible precursors to the formation of chlorinated dioxins, furans, and carcinogens;

(ii) combustion, including destruction and removal efficiencies; and

(iii) emissions, including continuous emission monitoring and air pollution control devices; and

(e) are necessary to implement the provisions of this section and to coordinate the requirements under this section with the requirements contained in 75-2-211 and 75-2-215.

(2) A person who applies for an air quality permit or alteration pursuant to 75-2-211 and 75-2-215 for a commercial medical waste incinerator or commercial hazardous waste incinerator shall provide, to the satisfaction of the department, the following information:

(a) a dispersion model of emissions, using approved methods, and those studies that are necessary to identify the potential community exposure;

(b) an analysis of the potential pathways for human exposure to air contaminants, particularly chlorinated dioxins, furans, heavy metals, and other carcinogens, including the potential for inhalation, ingestion, and physical contact by the affected communities; and

(c) a quantitative analysis of the estimated total possible human exposure to chlorinated dioxins, furans, heavy metals, and carcinogens for the affected communities.

(3) The department may not issue or alter an air quality permit pursuant to this chapter until the department has determined, based upon an analysis of the information provided by the applicant pursuant to subsection (2) and other necessary and relevant data, that the public health risk from air emissions or ambient concentrations of chlorinated dioxins, furans, heavy metals, and other hazardous air pollutants will not exceed the negligible risk standard required by 75-2-215 and any applicable federal standards for allowable intake, as determined by the department after a review of established and relevant federal standards and guidelines.

(4) This section may not be construed in any way to:

(a) require the department to promulgate standards for the allowable intake of any substances for which the federal government has not established standards;

(b) allow the department to promulgate standards for the allowable intake of any substances for which the federal government has established standards that are more stringent than the federal standards; or

(c) limit or otherwise impair the duty of the department under 75-2-215 to determine that emissions and ambient concentrations will constitute a negligible risk as required by 75-2-215(3)(d), including emissions and ambient concentrations of dioxins, furans, heavy metals, and carcinogens, before issuing an air quality permit pursuant to 75-2-211 and 75-2-215.

History: En. Sec. 4, Ch. 639, L. 1993; amd. Sec. 2, Ch. 498, L. 1995; amd. Sec. 23, Ch. 324, L. 2021.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

75-2-232. Disclosure statement required. (1) An air quality permit for a commercial medical waste or commercial hazardous waste incinerator may not be issued, transferred, or altered pursuant to 75-2-211 and 75-2-215 without an application under this section. Before an application for the issuance, transfer, or alteration of a permit under 75-2-211 and 75-2-215 for a commercial medical waste or commercial hazardous waste incinerator may be approved, the applicant and each principal with respect to the applicant shall submit to the department a disclosure statement containing the following information:

(a) the name, business address, and social security number of the applicant and each principal;

(b) a description of any civil and administrative complaint filed within 5 years before the date of the application against the applicant or a principal for the violation of an environmental protection law and whether the complaint resulted in a civil or administrative penalty;

(c) a description of all judgments of criminal conviction entered against the applicant or a principal for the violation of an environmental protection law within 5 years before the date of the application; and

(d) a description of all judgments of criminal conviction entered against the applicant or a principal for the violation of an environmental protection law within 5 years before the date of the application in another state that resulted from the operation of a medical waste

incinerator or a commercial hazardous waste incinerator. For the purposes of this subsection (d), an environmental protection law of another state means a law or administrative rule adopted pursuant to a law regulating solid or hazardous waste or underground storage tanks or protecting the air or water resource.

(2) A disclosure statement, as required in subsection (1), must be executed under oath or affirmation and is subject to the penalty for perjury. The department may verify and investigate the information contained in a statement required under this section.

(3) A person required to file a disclosure statement under this section shall provide assistance or information requested by the department that is related to the statement and shall cooperate in an inquiry or investigation conducted by the department under subsection (2).

History: En. Sec. 5, Ch. 639, L. 1993.

75-2-233. Denial or modification of permit — mitigating factors. (1) The department may deny an application for the issuance, transfer, or alteration of a permit under 75-2-211 and 75-2-215 for a commercial medical waste or commercial hazardous waste incinerator or impose additional conditions on a permit pursuant to subsection (2) if within 5 years before the date of the application:

(a) a judgment of criminal conviction of an environmental protection law has been entered against the applicant or a principal;

(b) a civil or administrative complaint for a violation of an environmental protection law has resulted in the assessment of a penalty against the applicant or a principal;

(c) the applicant or a principal has a history of repeated violations of environmental protection laws; or

(d) a judgment or criminal conviction for a violation described in 75-2-232(1)(d) has been entered against the applicant or a principal.

(2) As provided under subsection (1), the department may impose additional conditions on a permit related to permit length, inspections, monitoring, recordkeeping, and reporting.

(3) In making the decision to deny an application or to impose conditions on a permit pursuant to subsection (1), the department shall consider the following mitigating factors:

(a) the nature and gravity of the violation of environmental protection laws or violations described in 75-2-232(1)(d);

(b) the degree of culpability of the applicant or a principal;

(c) the applicant's or principal's cooperation with the state or federal agencies involved in the complaints and convictions referred to in 75-2-232; and

(d) the applicant's or principal's dissociation from other persons or entities convicted of acts referred to in 75-2-232.

History: En. Sec. 6, Ch. 639, L. 1993.

75-2-234. Registration. (1) The department may adopt rules for the registration of certain classes of sources of air contaminants in lieu of a permit application required under 75-2-211(2).

(2) Rules adopted for the registration of animal or human crematoriums must include requirements for:

(a) public notification prior to registration; and

(b) the inclusion of documentation through a registration process that provides projected emissions and ambient concentrations will constitute a negligible risk for the protection of public health, safety, and welfare and the environment.

History: En. Sec. 7, Ch. 231, L. 2003; amd. Sec. 24, Ch. 324, L. 2021; amd. Sec. 3, Ch. 142, L. 2023.

Part 3
Local Air Pollution Control

75-2-301. Local air pollution control programs — consistency with state and federal regulations — procedure for public notice and comment required. (1) After public hearing, a municipality or county may establish and administer a local air pollution control program if the program is consistent with this chapter and is approved by the department.

(2) If a local air pollution control program established by a county encompasses all or part of a municipality, the county and each municipality shall approve the program in accordance with subsection (1).

(3) Except as provided in subsection (4), the department by order may approve a local air pollution control program that:

(a) provides by rule, ordinance, or local law for requirements compatible with75-2-203, 75-2-204, 75-2-211, 75-2-212, 75-2-215, 75-2-217 through 75-2-219, and 75-2-402 and rules adopted under these sections;

(b) provides for the enforcement of requirements established under subsection (3)(a) by appropriate administrative and judicial processes; and

(c) provides for administrative organization, staff, financial resources, and other resources necessary to effectively and efficiently carry out the program. As part of meeting these requirements, a local air pollution control program may administer the permit or registration fee provisions of 75-2-220. The permit or registration fees collected by a local air pollution control program must be deposited in a county special revenue fund to be used by the local air pollution control program for administration of local air pollution control program permitting or registration activities.

(4) Except for those emergency powers provided for in 75-2-402, the department may not delegate to a local air pollution control program the authority to control any air pollutant source that:

(a) requires the preparation of an environmental impact statement in accordance with Title 75, chapter 1, part 2;

(b) is subject to regulation under the Montana Major Facility Siting Act, as provided in Title 75, chapter 20; or

(c) has the potential to emit 250 tons a year or more of any pollutant subject to regulation under this chapter, including fugitive emissions, unless the authority to control the source was delegated to a local air pollution control program prior to January 1, 1991.

(5) If the department finds that the location, character, or extent of particular concentrations of population, air pollutant sources, or geographic, topographic, or meteorological considerations or any combination of these makes impracticable the maintenance of appropriate levels of air quality without an areawide air pollution control program, the department may determine the boundaries within which the program is necessary and require it as the only acceptable alternative to direct state administration.

(6) If the department has reason to believe that any part of an air pollution control program in force under this section is either inadequate to prevent and control air pollution in the jurisdiction to which the program relates or is being administered in a manner inconsistent with this chapter, the department shall, on notice, conduct a hearing on the matter.

(7) If, after the hearing, the department determines that any part of the program is inadequate to prevent and control air pollution in the jurisdiction to which it relates or that it is not accomplishing the purposes of this chapter, it shall require that necessary corrective measures be taken within a reasonable time, not to exceed 60 days.

(8) If the jurisdiction fails to take these measures within the time required, the department shall administer within that jurisdiction all of the provisions of this chapter, including the terms contained in any applicable department order, that are necessary to correct the deficiencies found by the department. The department's control program supersedes all municipal or county air pollution laws, rules, ordinances, and requirements in the affected jurisdiction. The cost of the department's action is a charge on the jurisdiction.

(9) If the department finds that the control of a particular air pollutant source because of its complexity or magnitude is beyond the reasonable capability of the local jurisdiction or may be more efficiently and economically performed at the state level, it may assume and retain control over that air pollutant source. A charge may not be assessed against the jurisdiction. Findings made under this subsection may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.

(10) A jurisdiction in which the department administers all or part of its air pollution control program under subsection (8) may establish or resume an air pollution control program that meets the requirements of subsection (3).

(11) A municipality or county may administer all or part of its air pollution control program in cooperation with one or more municipalities or counties of this state or of other states.

(12) Local air pollution control programs established under this section shall provide procedures for public notice, public hearing, public comment, and appeal for any proposed new or revised rules, ordinances, or local laws adopted pursuant to this section. The procedures must comply with the following requirements:

(a) The local air pollution control program shall create and maintain a list of interested persons who wish to be informed of actions related to rules, ordinances, or local laws adopted by the local air pollution control program.

(b) At least 30 days prior to the adoption, revision, or repeal of a rule, ordinance, or law, the local air pollution control program shall give written notice of its intended action.

(c) The notice required under subsection (12)(b) must include:

(i) a statement of the terms or substance of the intended action or a description of the subjects and issues affected by the intended action;

(ii) an explanation of the procedure for a person to be included on the list of interested persons established pursuant to subsection (12)(a);

(iii) an explanation of the procedures and deadlines for presentation of oral or written comments related to the intended action;

(iv) an explanation of the process for requesting a public hearing as provided in subsection (12)(f); and

(v) the rationale for the intended action. The rationale must:

(A) include an explanation of why the intended action is reasonably necessary to implement the goals and purposes of the local air pollution control program;

(B) specifically address those intended actions for which there are no similar state or federal regulations or guidelines; and

(C) be written in plain, easily understood language.

(d) For the purposes of subsection (12)(c)(v), a statement of authority to adopt a rule, ordinance, or local law does not, standing alone, constitute a showing of reasonable necessity for the intended action.

(e) The local air pollution control program shall mail a copy of the proposed rule, ordinance, or local law to all interested persons on the list established pursuant to subsection (12)(a) who have made timely requests to be included on the list.

(f) If at least 10 of the persons who will be directly affected by the proposed rule, ordinance, or local law request a public hearing, the local air pollution control program shall hold a hearing to hear comments from the public on the intended action.

(g) The local air pollution control program shall prepare a written response to all comments submitted in writing or presented at the public hearing for consideration prior to adoption, revision, or repeal of the proposed rule, ordinance, or local law.

(h) A person who submits a written comment on a proposed action or who attends a public hearing in regard to a proposed action must be informed of the final action.

History: En. Sec. 16, Ch. 313, L. 1967; amd. Sec. 23, Ch. 349, L. 1974; R.C.M. 1947, 69-3919; amd. Sec. 5, Ch. 560, L. 1979; amd. Sec. 1, Ch. 141, L. 1991; amd. Sec. 19, Ch. 502, L. 1993; amd. Sec. 8, Ch. 471, L. 1995; amd. Sec. 2, Ch. 536, L. 2001; amd. Sec. 3, Ch. 339, L. 2015; amd. Sec. 25, Ch. 324, L. 2021; amd. Sec. 4, Ch. 249, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 249, L. 2025. Amendment effective May 1, 2025.

Cross-References

Montana Administrative Procedure Act — legislative review of rules — application, Title 2, ch. 4.

State regulations no more stringent than federal regulations or guidelines, 75-2-207.

75-2-302. State and federal aid. (1) Any local air pollution control program meeting the requirements of this chapter and rules made pursuant to this chapter is eligible for state aid in an amount up to 30% of the locally funded annual operating cost of the program.

(2) Federal aid granted to the state for developing or maintaining a local air pollution control program that is subsequently granted to a local program is not considered state aid.

(3) Subdivisions of the state may make application for, receive, administer, and expend any federal aid for the control of air pollution or the development and administration of programs related to air pollution control, provided the program is currently approved by the department under 75-2-301.

History: En. Sec. 17, Ch. 313, L. 1967; R.C.M. 1947, 69-3920; amd. Sec. 2, Ch. 141, L. 1991; amd. Sec. 26, Ch. 324, L. 2021.

Part 4
Enforcement, Appeal, and Penalties

75-2-401. Enforcement — notice — order for corrective action — administrative penalty. (1) When the department believes that a violation of this chapter, a rule adopted under this chapter, or a condition or limitation imposed by a permit issued pursuant to this chapter has occurred, it may cause written notice to be served personally or by certified mail on the alleged violator or the violator's agent. The notice must specify the provision of this chapter, the rule, or the permit condition or limitation alleged to be violated and the facts alleged to constitute a violation. The notice may include an order to take necessary corrective action within a reasonable period of time stated in the order or an order to pay an administrative penalty, or both. The order becomes final unless, within 30 days after the notice is received, the person named requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing.

(2) If, after a hearing held under subsection (1), the board finds that violations have occurred, it shall issue an appropriate order for the prevention, abatement, or control of the emissions involved or for the taking of other corrective action or assess an administrative penalty, or both. As appropriate, an order issued as part of a notice or after a hearing may prescribe the date by which the violation must cease; time limits for particular action in preventing, abating, or controlling the emissions; or the date by which the administrative penalty must be paid. If, after a hearing on an order contained in a notice, the board finds that a violation has not occurred or is not occurring, it shall rescind the order.

(3) (a) An action initiated under this section may include an administrative civil penalty of not more than $10,000 for each day of each violation, not to exceed a total of $80,000. If an order issued by the board under this section requires the payment of an administrative civil penalty, the board shall state findings and conclusions describing the basis for its penalty assessment.

(b) Administrative penalties collected under this section must be deposited in the alternative energy revolving loan account established in 75-25-101.

(c) Penalties imposed by an administrative order under this section may not be assessed for any day of violation that occurred more than 2 years prior to the issuance of the initial notice and order by the department under subsection (1).

(d) In determining the amount of penalty to be assessed for an alleged violation under this section, the department or board, as appropriate, shall consider the penalty factors in 75-1-1001.

(e) The department may bring a judicial action to enforce a final administrative order issued pursuant to this section. The action must be filed in the district court of the county in which the violation occurred.

(4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing conducted under this section.

(5) Instead of issuing the order provided for in subsection (1), the department may either:

(a) require that the alleged violators appear before the board for a hearing at a time and place specified in the notice and answer the charges complained of; or

(b) initiate action under 75-2-412 or 75-2-413.

(6) This chapter does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

(7) In connection with a hearing held under this section, the board may and on application by a party shall compel the attendance of witnesses and the production of evidence on behalf of the parties.

History: En. Sec. 11, Ch. 313, L. 1967; amd. Sec. 20, Ch. 349, L. 1974; amd. Sec. 6, Ch. 140, L. 1977; R.C.M. 1947, 69-3914; amd. Sec. 6, Ch. 560, L. 1979; amd. Sec. 1, Ch. 218, L. 1983; amd. Sec. 5, Ch. 502, L. 1993; amd. Sec. 21, Ch. 591, L. 2001; amd. Sec. 5, Ch. 487, L. 2005; amd. Sec. 27, Ch. 535, L. 2021.

Cross-References

Montana Administrative Procedure Act — contested cases — application, Title 2, ch. 4, part 6.

Montana Administrative Procedure Act — judicial review of agency action, Title 2, ch. 4, part 7.

75-2-402. Emergency procedure. (1) Any other law to the contrary notwithstanding, if the department finds that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, the department shall order persons causing or contributing to the air pollution to immediately reduce or discontinue the emission of air contaminants. Upon issuance of this order, the department shall fix a place and time within 24 hours for a hearing to be held before the board. Within 24 hours after the start of the hearing and without adjournment, the board shall confirm, modify, or set aside the order of the department.

(2) Except as provided in subsection (1), if the department finds that emissions from the operation of one or more air contaminant sources are causing imminent danger to human health or safety, it may order the person responsible for the operation in question to reduce or discontinue emissions immediately, without regard for 75-2-401. In this event, the requirements for hearing and confirmation, modification, or setting aside of orders as provided in subsection (1) apply.

(3) This section does not limit any power that the governor or any other officer may have to declare an emergency and act on the basis of this declaration, whether the power is conferred by statute or the constitution or is inherent to the office.

History: (1) thru (3)En. Sec. 12, Ch. 313, L. 1967; amd. Sec. 21, Ch. 349, L. 1974; amd. Sec. 7, Ch. 140, L. 1977; Sec. 69-3915, R.C.M. 1947; (4)En. Sec. 14, Ch. 313, L. 1967; amd. Sec. 9, Ch. 140, L. 1977; Sec. 69-3917, R.C.M. 1947; R.C.M. 1947, 69-3915, 69-3917(2); amd. Sec. 2, Ch. 417, L. 2013.

Cross-References

Declaration of emergency — authority of Governor, 10-3-104.
Local emergency — declaration, 10-3-402.
Energy emergencies — suspension of controls by Governor, 90-4-310.

75-2-403. Inspections. (1) The department or an authorized representative, for the purpose of ascertaining the state of compliance with this chapter or a rule, order, or permit in force under this chapter, may enter and inspect, at any reasonable time, any property, premises, or place, except a private residence, on or at which:

(a) an air contaminant source is located or is being constructed or installed;

(b) an emissions-related activity is conducted, such as air contaminant emissions or ambient concentration sampling, testing, or monitoring, or an activity in which samples are gathered, processed, or stored; or

(c) records are kept as required under this chapter or a rule, order, or permit made or issued under this chapter, for the purpose of inspecting those records. The authority granted under this subsection (c) does not limit the department's right to inspect any property, premises, or place, except a private residence, under subsections (1)(a) and (1)(b) if records are also kept at those sites.

(2) A person may not refuse entry or access to an authorized representative of the department who presents appropriate credentials when the department requests entry for purposes of inspection. A person may not obstruct, hamper, or interfere with an inspection.

(3) The department or an authorized representative must be provided access and must be allowed to copy, at reasonable times, any record that is required to be kept under this chapter or a rule, order, or permit made or issued under this chapter.

(4) The department or an authorized representative may inspect, at reasonable times, any facility, equipment, practices, or operations regulated or required under this chapter or a rule, order, or permit made or issued under this chapter.

(5) The department or an authorized representative must be allowed to sample or monitor, at reasonable times, substances or parameters for the purpose of ensuring compliance with the provisions of this chapter or a rule, order, or permit made or issued under this chapter.

(6) At the owner's or operator's request, the owner or operator of the premises shall receive a report stating all facts found that relate to compliance status.

(7) Inspections under this section must be conducted in compliance with all applicable federal or state rules or requirements for workplace safety and with all source-specific facility workplace safety rules or requirements. The source shall inform the inspector of all applicable workplace safety rules or requirements at the time of the inspection.

History: En. Sec. 9, Ch. 313, L. 1967; amd. Sec. 19, Ch. 349, L. 1974; amd. Sec. 5, Ch. 140, L. 1977; R.C.M. 1947, 69-3912; amd. Sec. 2, Ch. 218, L. 1983; amd. Sec. 2, Ch. 85, L. 1995.

Cross-References
Searches and seizures — right of private individuals to be secure, Art. II, sec. 11, Mont. Const.

75-2-404 through 75-2-410 reserved.

75-2-411. Judicial review. (1) A person aggrieved by an order of the board or local control authority may apply for rehearing upon one or more of the following grounds and upon no other grounds:

(a) the board or local control authority acted without or in excess of its powers;

(b) the order was procured by fraud;

(c) the order is contrary to the evidence;

(d) the applicant has discovered new evidence, material to the applicant, that the applicant could not with reasonable diligence have discovered and produced at the hearing; or

(e) competent evidence was excluded to the prejudice of the applicant.

(2) The petition must be in a form and filed at a time that the board prescribes.

(3) (a) Within 30 days after the application for rehearing is denied or, if the application is granted, within 30 days after the decision on the rehearing, an aggrieved party may appeal to the district court of the judicial district of the state that is the situs of property affected by the order.

(b) The appeal must be taken by serving a written notice of appeal upon the presiding officer of the board. Service must be made by the delivery of a copy of the notice to the presiding officer and by filing the original with the clerk of the court to which the appeal is taken. Immediately after service upon the board, the board shall certify to the district court the entire record and proceedings, including all testimony and evidence taken by the board. Immediately upon receiving the certified record, the district court shall fix a day for filing of briefs and hearing arguments on the cause and shall cause a notice of the dates to be served upon the board and the appellant.

(c) The court shall hear and decide the cause upon the record of the board. The court shall determine whether or not the board regularly pursued its authority, whether or not the findings of the board were supported by substantial competent evidence, and whether or not the board made errors of law prejudicial to the appellant.

(4) Either the board or the person aggrieved may appeal from the decision of the district court to the supreme court. The proceedings before the supreme court must be limited to a review of the record of the hearing before the board and of the district court's review of that record.

History: En. Sec. 14, Ch. 313, L. 1967; amd. Sec. 9, Ch. 140, L. 1977; R.C.M. 1947, 69-3917(3) thru (5); amd. Sec. 2492, Ch. 56, L. 2009.

Cross-References
Montana Administrative Procedure Act — judicial review, Title 2, ch. 4, part 7.

75-2-412. Criminal penalties — injunction preserved. (1) A person is guilty of an offense under this section if that person knowingly:

(a) violates a provision of this chapter or a rule, order, or permit made or issued under this chapter;

(b) makes a false material statement, representation, or certification on a form required under this chapter or in a notice or report required by a permit under this chapter; or

(c) renders inaccurate a monitoring device or method required under this chapter.

(2) A person guilty of an offense under subsection (1) is subject to a fine of not more than $10,000 per violation or imprisonment for a period not to exceed 2 years, or both. This offense must be classified as a misdemeanor. Each day of each violation constitutes a separate violation.

(3) Fines collected under this section, except fines collected by an approved local air pollution control program, must be deposited in the state general fund.

(4) Action under this section is not a bar to enforcement of this chapter or of a rule, order, or permit made or issued under it by injunction or other appropriate civil or administrative remedy. The department may institute and maintain in the name of the state any enforcement proceedings.

History: En. Sec. 18, Ch. 313, L. 1967; amd. Sec. 24, Ch. 349, L. 1974; R.C.M. 1947, 69-3921(1) thru (3), (5); amd. Sec. 3, Ch. 218, L. 1983; amd. Sec. 42, Ch. 557, L. 1987; amd. Sec. 6, Ch. 502, L. 1993.

Cross-References

Injunctions — Supreme Court jurisdiction, 3-2-205.
Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.
Injunctions, Title 27, ch. 19.
Execution of fine, 46-19-102.

75-2-413. Civil penalties — venue — effect of action — presumption of continuing violation under certain circumstances. (1) (a) A person who violates any provision of this chapter, a rule adopted under this chapter, or any order or permit made or issued under this chapter is subject to a civil penalty not to exceed $10,000 for each violation. Each day of each violation constitutes a separate violation. The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty. The civil penalty is in lieu of the criminal penalty provided for in 75-2-412, except for civil penalties for violation of the operating permit program required by Subchapter V of the federal Clean Air Act.

(b) Penalties assessed under this subsection (1) must be determined in accordance with the penalty factors in 75-1-1001.

(2) (a) Action under subsection (1) is not a bar to enforcement of this chapter or of a rule, order, or permit made or issued under this chapter by injunction or other appropriate civil remedies.

(b) An action under subsection (1) or to enforce this chapter or a rule, order, or permit made or issued under this chapter may be brought in the district court of any county where a violation occurs or is threatened.

(3) If the department has notified a person operating a commercial hazardous waste incinerator of a violation and if the department makes a prima facie showing that the conduct or events giving rise to the violations are likely to have continued or recurred past the date of notice, the days of violation are presumed to include the date of the notice and every day after the notice until the person establishes that continuous compliance has been achieved. This presumption may be overcome to the extent that the person operating a commercial hazardous waste incinerator can prove by a preponderance of evidence that there were intervening days when a violation did not occur, that the violation was not continuing in nature, or that the telemetering device was compromised or otherwise tampered with.

(4) Money collected under this section must be deposited in the alternative energy revolving loan account established in 75-25-101. This subsection does not apply to money collected by an approved local air pollution control program.

History: En. 69-3921.1 by Sec. 1, Ch. 98, L. 1975; amd. Sec. 2, Ch. 308, L. 1977; R.C.M. 1947, 69-3921.1; amd. Sec. 16, Ch. 560, L. 1979; amd. Sec. 4, Ch. 218, L. 1983; amd. Sec. 7, Ch. 502, L. 1993; amd. Sec. 3, Ch. 85, L. 1995; amd. Sec. 3, Ch. 498, L. 1995; amd. Sec. 22, Ch. 591, L. 2001; amd. Sec. 6, Ch. 487, L. 2005; amd. Sec. 28, Ch. 535, L. 2021.

Cross-References

Duties related to state matters, 7-4-2716.
Injunctions, Title 27, ch. 19.

75-2-414 through 75-2-420 reserved.

75-2-421. Persons subject to noncompliance penalties — exemptions. (1) Except as provided in subsection (2), the department may assess and collect a noncompliance penalty from any person who owns or operates:

(a) a stationary source (other than a primary nonferrous smelter that has received a nonferrous smelter order under 42 U.S.C. 7419) that is not in compliance with any emission limitation specified in an order of the board, emission standard, or compliance schedule under the state implementation plan approved by the federal environmental protection agency;

(b) a stationary source that is not in compliance with an emission limitation, emission standard, standard of performance, or other requirement under this chapter or 42 U.S.C. 7411, 7412, 7477, or 7603;

(c) a stationary source that is not in compliance with any other requirement under this chapter or any requirement of Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.; or

(d) any source referred to in subsections (1)(a), (1)(b), or (1)(c) that has been granted an exemption, extension, or suspension under subsection (2) or that is covered by a compliance order, or a primary nonferrous smelter that has received a primary nonferrous smelter order under 42 U.S.C. 7419, if that source is not in compliance with any interim emission control requirement or schedule of compliance under the extension, order, or suspension.

(2) Notwithstanding the requirements of subsection (1), the department may, after notice and opportunity for a public hearing, exempt any source from the requirements of 75-2-421 through 75-2-429 with respect to a particular instance of noncompliance that:

(a) the department finds is de minimis in nature and in duration;

(b) is caused by conditions beyond the reasonable control of the source and is of no demonstrable advantage to the source; or

(c) is exempt under 42 U.S.C. 7420(a)(2)(B) of the federal Clean Air Act.

(3) Any person who is jointly or severally adversely affected by the department's decision may request, within 15 days after the department renders its decision, upon affidavit setting forth the grounds for it, a hearing before the board. A hearing must be held under the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6.

History: En. Sec. 7, Ch. 560, L. 1979; amd. Sec. 8, Ch. 502, L. 1993.

Cross-References

Montana Administrative Procedure Act — hearing, 2-4-612.

75-2-422. Amount of noncompliance penalty — late charge. (1) The amount of the penalty that is assessed and collected with respect to any source under 75-2-421 through 75-2-429 must be equal to:

(a) the amount determined in accordance with the rules adopted by the department, which must be no less than the economic value that a delay in compliance after July 1, 1979, may have for the owner of the source, including the quarterly equivalent of the capital costs of compliance and debt service over a normal amortization period not to exceed 10 years, operation and maintenance costs foregone as a result of noncompliance, and any additional economic value that the delay may have for the owner or operator of such source; minus

(b) the amount of any expenditure made by the owner or operator of that source during the quarter for the purpose of bringing that source into and maintaining compliance with the requirement, to the extent that the expenditures have not been taken into account in the calculation of the penalty under subsection (1)(a).

(2) To the extent that any expenditure under subsection (1)(b) made during any quarter is not subtracted for the quarter from the costs under subsection (1)(a), the expenditure may be subtracted for any subsequent quarter from the costs. In no event may the amount paid be less than the quarterly payment minus the amount attributed to actual cost of construction.

(3) If the owner or operator of any stationary source to whom notice is issued under 75-2-425 does not submit a timely petition under 75-2-425(2)(b) or submits a petition that is denied and if the owner or operator fails to submit a calculation of the penalty assessment, a schedule for payment, and the information necessary for independent verification thereof, the department may enter into a contract with any person who has no financial interest in the matter to assist in determining the amount of the penalty assessment or payment schedule with respect to the source. The cost of carrying out the contract may be added to the penalty to be assessed against the owner or operator of the source.

(4) Any person who fails to pay the amount of any penalty with respect to any source under 75-2-421 through 75-2-429 on a timely basis shall pay in addition a quarterly nonpayment penalty for each quarter during which the failure to pay persists. The nonpayment penalty is equal to 20% of the aggregate amount of the person's penalties and nonpayment penalties with respect to the source that are unpaid as of the beginning of the quarter.

History: En. Sec. 8, Ch. 560, L. 1979; amd. Sec. 27, Ch. 324, L. 2021.

Cross-References

Montana Administrative Procedure Act — rulemaking, Title 2, ch. 4, part 2.

75-2-423. Manner of making payment. (1) The assessed penalty required under 75-2-421 through 75-2-429 shall be paid in quarterly installments for the period of covered noncompliance. All quarterly payments, determined without regard to any adjustment or any subtraction under 75-2-422(1)(b), after the first payment shall be equal.

(2) The first payment shall be due on the date 6 months after the date of issuance of the notice of noncompliance under 75-2-425 with respect to any source. Such first payment shall be in the amount of the quarterly installment for the upcoming quarter, plus the amount owed for any preceding period within the period of covered noncompliance for such source.

(3) For the purpose of this section, the term "period of covered noncompliance" means the period which begins on the date of issuance of the notice of noncompliance under 75-2-425 and ends on the date on which such source comes into or, for the purpose of establishing the schedule of payments, is estimated to come into compliance with such requirement.

History: En. Sec. 9, Ch. 560, L. 1979.

75-2-424. Adjustment of fee. (1) The department shall adjust from time to time the amount of the penalty assessment calculated or the payment schedule proposed by such owner or operator under 75-2-425(2)(a) if the department finds after notice and opportunity for a hearing on the record that the penalty or schedule does not meet the requirements of 75-2-421 through 75-2-429.

(2) Upon making a determination that a source with respect to which a penalty has been paid under 75-2-421 through 75-2-429 is in compliance and is maintaining compliance with the applicable requirement, the department shall review the actual expenditures made by the owner or operator of such source for the purpose of attaining and maintaining compliance and shall make a final adjustment within 180 days after such source comes into compliance and:

(a) provide reimbursement with interest to be paid by the state at appropriate prevailing rates for overpayment by such person; or

(b) assess and collect an additional payment with interest at appropriate prevailing rates for any underpayment by such person.

History: En. Sec. 10, Ch. 560, L. 1979.

Cross-References

Montana Administrative Procedure Act — contested cases — hearing procedure, Title 2, ch. 4, part 6.

75-2-425. Notice of noncompliance — challenge. (1) The department shall give a brief but reasonably specific notice of noncompliance to each person who owns or operates a source subject to 75-2-421(1) which is not in compliance as provided in that subsection, within 30 days after the department has discovered the noncompliance.

(2) Each person to whom notice has been given pursuant to subsection (1) shall:

(a) calculate the amount of penalty owed (determined in accordance with 75-2-422(1)) and the schedule of payments (determined in accordance with 75-2-423) for each source and, within 45 days after issuance of the notice of noncompliance, submit that calculation and proposed schedule, together with the information necessary for an independent verification thereof, to the department; or

(b) submit to the board a petition within 45 days after the issuance of such notice, challenging such notice of noncompliance or alleging entitlement to an exemption under 75-2-421(2) with respect to a particular source.

(3) Each person to whom notice of noncompliance is given shall pay the department the amount determined under 75-2-422 as the appropriate penalty unless there has been a final determination granting a petition filed pursuant to subsection (2)(b).

History: En. Sec. 11, Ch. 560, L. 1979.

Cross-References

Montana Administrative Procedure Act — contested cases — hearing procedure, Title 2, ch. 4, part 6.

75-2-426. Hearing on challenge. (1) The board shall provide a hearing on the record and make a decision (including findings of fact and conclusions of law) not later than 90 days after the receipt of any petition under 75-2-425(2)(b) with respect to such source.

(2) If the petition is denied, the petitioner shall submit the material required by 75-2-425(2)(a) to the department within 45 days of the date of decision.

History: En. Sec. 12, Ch. 560, L. 1979.

Cross-References

Montana Administrative Procedure Act — contested cases — applicability, Title 2, ch. 4, part 6.

75-2-427. Deposit of noncompliance penalty fees. All noncompliance penalties collected by the department pursuant to 75-2-421 through 75-2-429 shall be deposited in the state special revenue fund until a final determination and adjustment have been made as provided in 75-2-424 and amounts have been deducted by the department for costs attributable to implementation of 75-2-421 through 75-2-429 and for contract costs incurred pursuant to 75-2-422(3), if any. After a final determination has been made and additional payments or refunds have been made, the penalty money remaining shall be transferred to the state general fund.

History: En. Sec. 13, Ch. 560, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

Cross-References

Fund structure, 17-2-102.

75-2-428. Effect of new standards on noncompliance penalty. In the case of any emission limitation, emission standard, or other requirement approved or adopted by the department under this chapter after July 1, 1979, and approved by the federal environmental protection agency as an amendment to the state implementation plan, which is more stringent than the emission limitation or requirement for the source in effect prior to such approval or promulgation, if any, or where there was no emission limitation, emission standard, or other requirement approved or adopted before July 1, 1979, the date for imposition of the noncompliance penalty under 75-2-421 through 75-2-429 shall be the date on which the source is required to be in full compliance with such emission limitation, emission standard, or other requirement or 3 years after the approval or promulgation of such emission limitation or requirement, whichever is sooner.

History: En. Sec. 14, Ch. 560, L. 1979; amd. Sec. 28, Ch. 324, L. 2021.

75-2-429. Effect of noncompliance penalty on other remedies. (1) Any orders, payments, sanctions, or other requirements under 75-2-421 through 75-2-428 shall be in addition to any other permits, orders, payments, sanctions, or other requirements established under this chapter and shall in no way affect any civil or criminal enforcement proceedings brought under 75-2-412 or 75-2-413.

(2) The noncompliance penalties collected pursuant to 75-2-421 through 75-2-428 are intended to be cumulative and in addition to any other remedies, procedures, and requirements authorized by this chapter.

History: En. Sec. 15, Ch. 560, L. 1979.

Part 5
Asbestos Control

75-2-501. Short title. This part may be cited as the "Asbestos Control Act".

History: En. Sec. 1, Ch. 581, L. 1989.

75-2-502. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Accreditation" means a certificate issued by the department that permits a person to work in an asbestos-related occupation.

(2) "Asbestos" means asbestiform varieties of chrysotile, amosite, crocidolite, anthophyllite, tremolite, or actinolite.

(3) "Asbestos project" means the encapsulation, enclosure, removal, repair, renovation, placement in new construction, demolition of asbestos in a building or other structure, or the transportation or disposal of asbestos-containing waste. The term does not include a project that involves less than 10 square feet in surface area or 3 linear feet of pipe.

(4) "Asbestos-related occupation" means an inspector, management planner, project designer, contractor, supervisor, or worker for an asbestos project.

(5) "Department" means the department of environmental quality provided for in 2-15-3501.

(6) "Person" means an individual, partnership, corporation, sole proprietorship, firm, enterprise, franchise, association, state or municipal agency, political subdivision of the state, or any other entity.

History: En. Sec. 2, Ch. 581, L. 1989; amd. Sec. 179, Ch. 418, L. 1995; amd. Sec. 3, Ch. 309, L. 2015.

75-2-503. Rulemaking authority — issuance of permits. (1) The department shall, subject to the provisions of 75-2-207, adopt rules establishing standards and procedures for accreditation of asbestos-related occupations and control of the work performed by persons in asbestos-related occupations. The rules must be consistent with federal law and include but are not limited to:

(a) standards for training course review and approval;

(b) standards for accreditation of applicants for asbestos-related occupations;

(c) examination requirements for accreditation of applicants for asbestos-related occupations;

(d) requirements for renewal of accreditation, including periodic refresher courses;

(e) revocation of accreditation;

(f) inspection requirements for asbestos projects and asbestos-related occupations credentials;

(g) criteria to determine whether and what type of control measures are necessary for an asbestos project and whether a project is completed in a manner sufficient to protect public health, including criteria setting allowable limits on indoor airborne asbestos. A determination of whether asbestos abatement of a structure is necessary may not be based solely upon the results of airborne asbestos testing.

(h) requirements for issuance of asbestos project permits and conditions that permitholders shall meet;

(i) standards for seeking injunctions, criminal and civil penalties, or emergency actions;

(j) advance notification procedures and issuance of permits for asbestos projects; and

(k) fees, which must be commensurate with costs, for:

(i) review and approval of training courses;

(ii) application for and renewal of accreditation by a person seeking to pursue an asbestos-related occupation;

(iii) issuance and administration of asbestos project permits, including annual asbestos project permits for facilities; and

(iv) requested inspections of asbestos projects.

(2) For asbestos projects having a cost of $3,000 or less, the department shall issue asbestos project permits within 7 calendar days following the receipt of a properly completed permit application and the appropriate fee.

History: En. Sec. 3, Ch. 581, L. 1989; amd. Sec. 51, Ch. 16, L. 1991; amd. Sec. 9, Ch. 471, L. 1995; amd. Sec. 1, Ch. 25, L. 2003.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

75-2-504. Facility permits. The department shall provide by rule a procedure for the issuance of an annual asbestos project permit to any facility that has an asbestos health and safety program meeting department criteria and that continuously employs accredited asbestos workers. This permit allows a facility to conduct asbestos projects within the confines of the facility's controlled area during the period for which the permit is in force. The provisions of this permit may not preclude state and federal requirements for asbestos project notification.

History: En. Sec. 4, Ch. 581, L. 1989; amd. Sec. 2, Ch. 25, L. 2003.

75-2-505. Small project review requirement. The department shall review a permit application within 5 working days of receipt of a complete application and an appropriate fee for an asbestos project that:

(1) involves more than 10 square feet but less than 160 square feet in surface area;

(2) involves more than 3 linear feet but less than 260 linear feet of pipe; or

(3) involves more than 3 cubic feet but less than 35 cubic feet of volume.

History: En. Sec. 2, Ch. 309, L. 2015.

75-2-506 and 75-2-507 reserved.

75-2-508. Asbestos control account. (1) There is an asbestos control account in the state special revenue fund. There must be deposited in the account all money received from fees collected under this part.

(2) Funds in the account are allocated to the department for the purpose of funding the costs of implementing and operating the asbestos control program established under this part.

History: En. Sec. 1, Ch. 596, L. 1991; amd. Sec. 1, Ch. 293, L. 1999.

75-2-509 and 75-2-510 reserved.

75-2-511. Accreditation requirements — restrictions. (1) To qualify for accreditation in a particular asbestos-related occupation, a person must:

(a) (i) successfully complete an asbestos-related training course for that occupation approved by the department or the United States environmental protection agency; and

(ii) pass an examination approved by the department;

(b) satisfactorily demonstrate equivalent previous training or experience in the occupation as prescribed by department rule; or

(c) have successfully completed an asbestos-related training course for that occupation, approved by the United States environmental protection agency, during the time period immediately following the passage of this part and ending on December 31, 1989.

(2) After January 1, 1990, a person may not:

(a) engage in an asbestos-related occupation unless accredited in that occupation by the department;

(b) conduct an asbestos project without a permit from the department or violate the conditions of a permit;

(c) contract with or employ in an asbestos-related occupation a person not accredited in that occupation by the department; or

(d) offer a training course for an asbestos-related occupation to meet the accreditation requirements of this section unless the department approves the course.

(3) A person who applies for accreditation shall submit the fees and follow procedures prescribed by department rule.

History: En. Sec. 5, Ch. 581, L. 1989.

75-2-512. Repealed. Sec. 3, Ch. 596, L. 1991.

History: En. Sec. 6, Ch. 581, L. 1989.

75-2-513. Records. A person engaged in an asbestos project shall maintain the records required by department rule concerning the nature of project activities.

History: En. Sec. 7, Ch. 581, L. 1989.

75-2-514. Civil penalties — venue for actions to recover. (1) (a) A district court may assess a civil penalty of not more than $25,000 a day upon a person that violates any provision of this part, a rule adopted under this part, or a permit or order issued under this part. In the case of a continuing violation, each day the violation continues constitutes a separate violation.

(b) Penalties assessed under this subsection (1) must be determined in accordance with the penalty factors in 75-1-1001.

(2) An action under this section is not a bar to enforcement by injunction or other appropriate civil or administrative remedies.

(3) Penalties provided for in subsection (1) are recoverable in an action brought by the department. The action must be filed in the district court of the county in which the violation occurred.

History: En. Sec. 9, Ch. 581, L. 1989; amd. Sec. 2, Ch. 596, L. 1991; amd. Sec. 2, Ch. 293, L. 1999; amd. Sec. 7, Ch. 487, L. 2005; amd. Sec. 29, Ch. 535, L. 2021.

75-2-515. Administrative enforcement. (1) The department may deny, suspend, or revoke the accreditation of a person that:

(a) fraudulently or deceptively obtains or attempts to obtain accreditation;

(b) fails to meet the qualifications for accreditation or fails to comply with the requirements of this part, a rule adopted under this part, or a permit or order issued under this part; or

(c) fails to meet an applicable federal or state standard for asbestos projects.

(2) When the department believes that a violation of this part, a rule adopted under this part, or a permit or order issued under this part has occurred, it may serve written notice of the violation personally or by certified mail on the alleged violator or the violator's agent. The notice must specify the provision of this part or the rule, permit, or order alleged to be violated

and the facts alleged to constitute a violation. The notice may include an order to take necessary corrective action within a reasonable period of time stated in the order, an order to pay an administrative civil penalty, or both. An order becomes final unless, within 30 days after the order is received, the person that has been named requests, in writing, a hearing before the board.

(3) On receipt of a hearing request, the board shall schedule a hearing. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to any hearing conducted under this section. If, after a hearing, the board finds that a violation has not occurred or is not occurring, it shall rescind the order.

(4) (a) An action initiated under this section may include an administrative civil penalty of not more than $10,000 for each day of each violation, not to exceed a total of $80,000. Any order issued by the department under this section requiring payment of an administrative civil penalty must specify the basis for the penalty assessment.

(b) A penalty may not be assessed under this section for any day of violation that occurred more than 3 years prior to the department issuing the order requiring payment of the penalty.

(c) In determining the amount of a penalty assessed to a person under this section, the department shall consider the penalty factors in 75-1-1001.

(5) In addition to or instead of issuing an order under subsection (2), the department may:

(a) require the alleged violator to appear before the board for a hearing at a time and place specified in the notice of hearing to answer the charges complained of; or

(b) initiate action under 75-2-514.

History: En. Sec. 3, Ch. 293, L. 1999; amd. Sec. 8, Ch. 487, L. 2005.

75-2-516. Criminal penalties. (1) A person convicted of purposely or knowingly violating any provision of this part, a rule adopted under this part, or a permit or order issued under this part is guilty of a misdemeanor.

(2) A prosecution under this section is not a bar to enforcement by injunction or other appropriate civil or administrative remedies.

History: En. Sec. 4, Ch. 293, L. 1999.

Cross-References

Injunctions, Title 27, ch. 19.

Misdemeanor penalty when none specified, 46-18-212.

75-2-517. Injunctions. The department may institute and maintain in the name of the state, actions for injunctive relief, as provided in Title 27, chapter 19, to:

(1) immediately restrain a person from engaging in an unauthorized activity that is endangering or causing damage to public health or the environment;

(2) enjoin a violation of this part, a rule adopted under this part, an order issued under this part, or a permit issued under this part, without the necessity of prior revocation of the permit; or

(3) require compliance with this part, a rule adopted under this part, or a permit or order issued under this part.

History: En. Sec. 5, Ch. 293, L. 1999.

75-2-518. Inspections — sampling. (1) (a) At any reasonable time and upon presentation of credentials, an employee or agent of the department may enter upon and inspect any place at which:

(i) an asbestos project is being conducted;

(ii) asbestos-containing material from an asbestos project is stored; or

(iii) records pertinent to an asbestos project are maintained.

(b) The employee or agent of the department may have access to and may copy any records relating to an asbestos project for the purpose of enforcing the provisions of this part, rules adopted under this part, or a permit or order issued under this part.

(2) During an inspection under this section, the employee or agent of the department may take samples of any suspected asbestos-containing material, including samples from any vehicle in which asbestos-containing waste materials are transported. If the employee or agent of the department takes a sample of any suspected asbestos-containing material, prior to leaving the premises, the employee or agent shall give to the person in charge of the asbestos project a

receipt describing the sample taken and, if requested, a portion of each sample equal in volume or weight to the portion retained. If an analysis is made of the samples, a copy of the results of the analysis must be furnished to the person in charge of the asbestos project.

History: En. Sec. 6, Ch. 293, L. 1999.

75-2-519. Cleanup orders. The department may issue a cleanup order to any person that has deposited asbestos-containing material or that has disturbed asbestos-containing material or that owns any property where the asbestos-containing material is located when the material poses an immediate threat to public health or the environment or is likely to pose a threat to public health or the environment in the immediate future. The order may direct the person to clean up and transport the asbestos-containing material to an authorized disposal facility, to treat the material so as to render it nonhazardous, or to take other necessary actions.

History: En. Sec. 7, Ch. 293, L. 1999.

Cross-References

Contested cases, Title 2, ch. 4, part 6.

CHAPTER 3
RADON CONTROL

Part 1 — General Provisions (Renumbered)

Part 2 — Control of Radioactive Substances (Renumbered)

Part 3 — Disposal of Large Quantities of Radioactive Material (Renumbered)

Part 4 — Enforcement, Appeal, and Penalties (Renumbered)

Part 5 — Northwest Interstate Compact on Low-Level Radioactive Waste Management (Renumbered)

Part 6 — Montana Radon Control Act

75-3-601. Short title.
75-3-602. Definitions.
75-3-603. Radon testing and mitigation proficiency listing requirements.
75-3-604. Voluntary disclosure of information to department.
75-3-605. Public information and education.
75-3-606. Radon disclosure statement on real estate documents — disclosure of prior radon testing — immunity from liability.
75-3-607. Radon control account.

Part 1
General Provisions
(Renumbered)

75-3-101. Renumbered 50-79-101. Sec. 13, Ch. 73, L. 1997.

75-3-102. Renumbered 50-79-102. Sec. 13, Ch. 73, L. 1997.

75-3-103. Renumbered 50-79-103. Sec. 13, Ch. 73, L. 1997.

75-3-104. Renumbered 50-79-104. Sec. 13, Ch. 73, L. 1997.

75-3-105. Renumbered 50-79-105. Sec. 13, Ch. 73, L. 1997.

75-3-106. Renumbered 50-79-106. Sec. 13, Ch. 73, L. 1997.

75-3-107. Renumbered 50-79-107. Sec. 13, Ch. 73, L. 1997.

75-3-108. Renumbered 50-79-108. Sec. 13, Ch. 73, L. 1997.

Part 2
Control of Radioactive Substances
(Renumbered)

75-3-201. Renumbered 50-79-201. Sec. 13, Ch. 73, L. 1997.

75-3-202. Renumbered 50-79-202. Sec. 13, Ch. 73, L. 1997.

75-3-203. Renumbered 50-79-203. Sec. 13, Ch. 73, L. 1997.

75-3-204. Renumbered 50-79-204. Sec. 13, Ch. 73, L. 1997.

Part 3
Disposal of Large Quantities of Radioactive Material (Renumbered)

75-3-301. Renumbered 50-79-301. Sec. 13, Ch. 73, L. 1997.

75-3-302. Renumbered 50-79-302. Sec. 13, Ch. 73, L. 1997.

75-3-303. Renumbered 50-79-303. Sec. 13, Ch. 73, L. 1997.

75-3-304. Renumbered 50-79-304. Sec. 13, Ch. 73, L. 1997.

Part 4
Enforcement, Appeal, and Penalties (Renumbered)

75-3-401. Renumbered 50-79-401. Sec. 13, Ch. 73, L. 1997.

75-3-402. Renumbered 50-79-402. Sec. 13, Ch. 73, L. 1997.

75-3-403. Renumbered 50-79-403. Sec. 13, Ch. 73, L. 1997.

75-3-404. Renumbered 50-79-404. Sec. 13, Ch. 73, L. 1997.

75-3-405. Renumbered 50-79-405. Sec. 13, Ch. 73, L. 1997.

75-3-406. Renumbered 50-79-406. Sec. 13, Ch. 73, L. 1997.

75-3-407. Renumbered 50-79-407. Sec. 13, Ch. 73, L. 1997.

75-3-408 and 75-3-409 reserved.

75-3-410. Renumbered 50-79-410. Sec. 13, Ch. 73, L. 1997.

Part 5
Northwest Interstate Compact on Low-Level Radioactive Waste Management (Renumbered)

75-3-501. Renumbered 50-79-501. Sec. 13, Ch. 73, L. 1997.

75-3-502. Renumbered 50-79-502. Sec. 13, Ch. 73, L. 1997.

Part 6
Montana Radon Control Act

75-3-601. Short title. This part may be cited as the "Montana Radon Control Act".
History: En. Sec. 1, Ch. 527, L. 1993.

75-3-602. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of environmental quality.

(2) "Inhabitable real property" means any real property that includes a building affixed to land. The building must be designed to be primarily occupied by humans, either as a dwelling or as a place of business.

(3) "Mitigation project" means to repair or alter a building or design for the purpose, in whole or in part, of reducing the concentration of radon in the indoor atmosphere.

(4) "Person" means an individual, partnership, corporation, sole proprietorship, firm, enterprise, franchise, association, consultant, state or municipal agency, political subdivision of the state, or any other entity.

(5) "Radon" means any of the gaseous radioactive decay products of uranium or thorium.

(6) "Radon progeny" means any of the radioactive decay products of radon.

(7) "Radon-related occupation" means the occupation of any person who performs radon gas or radon progeny measurements, including sample collection, analysis, or interpretation of those measurements, or who performs radon gas or radon progeny mitigation.

History: En. Sec. 2, Ch. 527, L. 1993; amd. Sec. 1, Ch. 185, L. 1995; amd. Sec. 183, Ch. 418, L. 1995.

75-3-603. Radon testing and mitigation proficiency listing requirements. In order to be publicly listed as proficient by the department in a radon-related occupation, a person shall pass a United States environmental protection agency proficiency examination approved by the department.

History: En. Sec. 3, Ch. 527, L. 1993.

75-3-604. Voluntary disclosure of information to department. (1) The results of measurements of radon gas or radon progeny performed by a person may be reported to the department. The report may include the radon levels detected and the location and description of the building.

(2) Except for use in conducting legitimate scientific studies, as determined by the department, data and information relating to radon gas and radon progeny contamination at nonpublic properties, including residential dwellings, gathered under this part must be considered confidential by the department. The department shall provide the bureau of mines and geology with all information received by the department under subsection (1) for conducting legitimate scientific studies. The department may not release the data or information in its possession to anyone other than the owner or occupant of the property.

History: En. Sec. 4, Ch. 527, L. 1993.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Right of privacy, Art. II, sec. 10, Mont. Const.

75-3-605. Public information and education. The department shall initiate and administer a program designed to educate and inform the public concerning radon gas and radon progeny. The program must include but is not limited to:

(1) public presentations to interested parties;

(2) developing, reproducing, and distributing printed materials to home owners and other interested groups;

(3) responding to telephone inquiries on a maintained toll-free telephone number;

(4) providing technical and training information for radon measurement and mitigation;

(5) maintaining and distributing lists of qualified persons who perform measurement and mitigation services;

(6) developing and implementing an effective communication strategy to encourage all home owners to test for radon; and

(7) encouraging cooperative partnerships to promote radon testing of buildings and homes.

History: En. Sec. 5, Ch. 527, L. 1993.

75-3-606. Radon disclosure statement on real estate documents — disclosure of prior radon testing — immunity from liability. (1) A radon disclosure statement must be provided on at least one document, form, or application executed prior to or contemporaneously with an offer for the purchase and sale of inhabitable real property. The seller or seller's agent shall provide the following disclosure statement to the buyer, and the buyer shall acknowledge receipt of this disclosure statement by signing a copy of the disclosure statement:

"RADON GAS: RADON IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN MONTANA. ADDITIONAL INFORMATION REGARDING RADON AND RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY OR STATE PUBLIC HEALTH UNIT."

(2) Whenever a seller knows that a building has been tested for radon gas and radon progeny, the seller shall provide to the buyer, prior to or upon entry into a contract for the purchase of that building, a copy of the results of that test and evidence of any subsequent mitigation or treatment. A prospective buyer who contracts for the testing may receive the

results of that testing. The furnishing of test results and evidence of mitigation or treatment is not to be construed as a promise, warranty, or representation of any sort by the seller or the seller's agent that the test results are accurate or that the mitigation or treatment is effective. This section does not create a contingency on the purchase of the property or any right to rescind a contract for purchase unless the contingency or right to rescind is an express term of the applicable contract.

(3) A seller or seller's agent who complies with subsections (1) and (2) is not liable in any action based on the presence of radon gas or radon progeny in the building.

History: En. Sec. 6, Ch. 527, L. 1993; amd. Sec. 2, Ch. 185, L. 1995.

75-3-607. Radon control account. (1) There is a radon control account in the state special revenue fund. There must be deposited in the account all money received from any loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of this part that are received from public or private sources, except for money received from the federal government.

(2) Funds in the account are allocated to the department for the purpose of funding the costs of implementing and operating the program established under this part.

History: En. Sec. 7, Ch. 527, L. 1993; amd. Sec. 1, Ch. 28, L. 2003.

CHAPTER 4
RESERVED

CHAPTER 5
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Chapter Compiler's Comments

2025 Amendment of Administrative Rule: Section 1, Ch. 756, L. 2025, directed the Department of Environmental Quality to amend ARM 17.30.716. See 2025 Session Law for amendment made by sec. 1, Ch. 756, L. 2025. Effective May 13, 2025.

Chapter Cross-References

The Municipal Revenue Bond Act of 1939, Title 7, ch. 7, part 44.
Metropolitan sanitary and storm sewer district, Title 7, ch. 13, part 1.
County water and sewer districts, Title 7, ch. 13, part 22.
Public sewer systems, Title 7, ch. 13, part 42.
Nuisances, Title 27, ch. 30.
Water treatment plant operators, Title 37, ch. 42.
Water well contractors, 37-43-101.
Penalties, fees, and interest, Title 75, ch. 1, part 10.
Public water supply, Title 75, ch. 6, part 1.
Watershed protection — when construction prohibited, 75-6-112.
Protection of lake areas, Title 75, ch. 7, part 2.
Sanitation in subdivisions, Title 76, ch. 4, part 1.
Floodway management and regulation, Title 76, ch. 5.
Conservation districts, Title 76, ch. 15.
Watershed protection of state forests, 77-5-101, 77-5-102.
Agricultural chemical ground water protection, Title 80, ch. 15.
Action for damage to water supply caused by metal mining operation, 82-4-355.
Water resources — administration, Title 85, ch. 1, part 2.
Waste and contamination of ground water prohibited, 85-2-505.
Water conservancy districts, Title 85, ch. 9.
Energy emergency provisions — exclusion, 90-4-310.

Part 1
General Provisions

75-5-101. Policy. It is the public policy of this state to:

(1) conserve water by protecting, maintaining, and improving the quality and potability of water for public water supplies, wildlife, fish and aquatic life, agriculture, industry, recreation, and other beneficial uses;

(2) provide a comprehensive program for the prevention, abatement, and control of water pollution; and

(3) balance the inalienable rights to pursue life's basic necessities and possess and use property in lawful ways with the policy of preventing, abating, and controlling water pollution in implementing the program referred to in subsection (2).

History: En. Sec. 121, Ch. 197, L. 1967; amd. Sec. 1, Ch. 21, L. 1971; amd. Sec. 1, Ch. 455, L. 1975; R.C.M. 1947, 69-4801(1); amd. Sec. 9, Ch. 361, L. 2003.

Cross-References

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.

Duty to maintain clean and healthful environment, Art. IX, sec. 1, Mont. Const.

75-5-102. Intent — purpose — rights of action not abridged. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted this chapter. It is the legislature's intent that the requirements of this chapter provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources. A purpose of this chapter is to provide additional and cumulative remedies to prevent, abate, and control the pollution of state waters.

(2) This chapter does not abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor does this chapter or an act done under it estop the state or a municipality or person, as owner of water rights or otherwise, in the exercise of the person's rights in equity or under the common law or statutory law to suppress nuisances or to abate pollution.

History: En. Sec. 17, Ch. 21, L. 1971; amd. Sec. 6, Ch. 506, L. 1973; amd. Sec. 67, Ch. 349, L. 1974; amd. Sec. 11, Ch. 455, L. 1975; R.C.M. 1947, 69-4823(4); amd. Sec. 10, Ch. 361, L. 2003.

Cross-References

Indemnification against loss to environment, Title 15, ch. 38.

75-5-103. *(Temporary)* **Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Associated supporting infrastructure" means:

(a) electric transmission and distribution facilities;

(b) pipeline facilities;

(c) aboveground ponds and reservoirs and underground storage reservoirs;

(d) rail transportation;

(e) aqueducts and diversion dams;

(f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or

(g) other supporting infrastructure, as defined by department rule, that is necessary for an energy development project.

(2) "Board" means the board of environmental review provided for in 2-15-3502.

(3) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

(4) "Council" means the water pollution control advisory council provided for in 2-15-2107.

(5) (a) "Currently available data" means data that is readily available to the department at the time a decision is made, including information supporting its previous lists of water bodies that are threatened or impaired.

(b) The term does not mean new data to be obtained as a result of department efforts.

(6) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

(7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

(9) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.

(10) "Energy development project" means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:

(a) generating electricity;

(b) producing gas derived from coal;

(c) producing liquid hydrocarbon products;

(d) refining crude oil or natural gas;

(e) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5; or

(f) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.

(11) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

(12) "High-quality waters" means all state waters, except:

(a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by the department's classification rules; and

(b) surface waters that:

(i) are not capable of supporting any one of the designated uses for their classification; or

(ii) have zero flow or surface expression for more than 270 days during most years.

(13) "Impaired water body" means a water body or stream segment for which sufficient credible data shows that the water body or stream segment is failing to achieve compliance with applicable water quality standards.

(14) "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

(15) "Interested person" means a person who has a real property interest, a water right, or an economic interest that is or may be directly and adversely affected by the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested a feasibility allowance.

(16) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future nonpoint sources or to natural background sources.

(17) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the maximum change that can occur from the best practicable condition in a surface water without causing a violation of the surface water quality standards.

(18) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

(19) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

(20) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the department.

(21) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(22) "Outstanding resource waters" means:

(a) state surface waters located wholly within the boundaries of areas designated as national parks or national wilderness areas as of October 1, 1995; or

(b) other surface waters or ground waters classified by the department under the provisions of 75-5-316 and approved by the legislature.

(23) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

(24) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

(25) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

(26) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

(27) (a) "Pollution" means:

(i) contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or

(ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

(b) The term does not include:

(i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules adopted by the department under this chapter;

(ii) activities conducted under this chapter that comply with the conditions imposed by the department in short-term authorizations pursuant to 75-5-308;

(iii) contamination of ground water within the boundaries of an underground mine using in situ coal gasification and operating in accordance with a permit issued under 82-4-221.

(c) Contamination referred to in subsection (27)(b)(iii) does not require a mixing zone.

(28) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

(29) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

(30) "Standard of performance" means a standard adopted by the department for the control of the discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, when practicable, a standard permitting no discharge of pollutants.

(31) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

(b) The term does not apply to:

(i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

(ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

(32) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in combination with narrative information, that supports a finding as to whether a water body is achieving compliance with applicable water quality standards.

(33) "Threatened water body" means a water body or stream segment for which sufficient credible data and calculated increases in loads show that the water body or stream segment is fully supporting its designated uses but threatened for a particular designated use because of:

(a) proposed sources that are not subject to pollution prevention or control actions required by a discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

(b) documented adverse pollution trends.

(34) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for point sources and load allocations for both nonpoint sources and natural background sources established at a level necessary to achieve compliance with applicable surface water quality standards.

(35) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

(36) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources.

(37) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

(38) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

(39) "Watershed advisory group" means a group of individuals who wish to participate in an advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in an advisory capacity as provided in 75-5-704.

75-5-103. *(Effective on occurrence of contingency)* **Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Associated supporting infrastructure" means:

(a) electric transmission and distribution facilities;

(b) pipeline facilities;

(c) aboveground ponds and reservoirs and underground storage reservoirs;

(d) rail transportation;

(e) aqueducts and diversion dams;

(f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or

(g) other supporting infrastructure, as defined by department rule, that is necessary for an energy development project.

(2) "Board" means the board of environmental review provided for in 2-15-3502.

(3) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

(4) "Council" means the water pollution control advisory council provided for in 2-15-2107.

(5) (a) "Currently available data" means data that is readily available to the department at the time a decision is made, including information supporting its previous lists of water bodies that are threatened or impaired.

(b) The term does not mean new data to be obtained as a result of department efforts.

(6) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

(7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

(9) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.

(10) "Energy development project" means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:

(a) generating electricity;

(b) producing gas derived from coal;
(c) producing liquid hydrocarbon products;
(d) refining crude oil or natural gas;
(e) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5; or
(f) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.

(11) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

(12) "High-quality waters" means all state waters, except:
(a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by the department's classification rules; and
(b) surface waters that:
(i) are not capable of supporting any one of the designated uses for their classification; or
(ii) have zero flow or surface expression for more than 270 days during most years.

(13) "Impaired water body" means a water body or stream segment for which sufficient credible data shows that the water body or stream segment is failing to achieve compliance with applicable water quality standards.

(14) "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

(15) "Interested person" means a person who has a real property interest, a water right, or an economic interest that is or may be directly and adversely affected by the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested a feasibility allowance.

(16) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future nonpoint sources or to natural background sources.

(17) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the maximum change that can occur from the best practicable condition in a surface water without causing a violation of the surface water quality standards.

(18) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

(19) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

(20) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the department.

(21) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(22) "Outstanding resource waters" means:
(a) state surface waters located wholly within the boundaries of areas designated as national parks or national wilderness areas as of October 1, 1995; or
(b) other surface waters or ground waters classified by the department under the provisions of 75-5-316 and approved by the legislature.

(23) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

(24) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

(25) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

(26) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

(27) (a) "Pollution" means:

(i) contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or

(ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

(b) The term does not include:

(i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules adopted by the department under this chapter;

(ii) activities conducted under this chapter that comply with the conditions imposed by the department in short-term authorizations pursuant to 75-5-308;

(iii) contamination of ground water within the boundaries of a geologic storage reservoir, as defined in 82-11-101, by a carbon dioxide injection well in accordance with a permit issued pursuant to Title 82, chapter 11, part 1;

(iv) contamination of ground water within the boundaries of an underground mine using in situ coal gasification and operating in accordance with a permit issued under 82-4-221;

(c) Contamination referred to in subsections (27)(b)(iii) and (27)(b)(iv) does not require a mixing zone.

(28) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

(29) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

(30) "Standard of performance" means a standard adopted by the department for the control of the discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, when practicable, a standard permitting no discharge of pollutants.

(31) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

(b) The term does not apply to:

(i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

(ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

(32) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in combination with narrative information, that supports a finding as to whether a water body is achieving compliance with applicable water quality standards.

(33) "Threatened water body" means a water body or stream segment for which sufficient credible data and calculated increases in loads show that the water body or stream segment is fully supporting its designated uses but threatened for a particular designated use because of:

(a) proposed sources that are not subject to pollution prevention or control actions required by a discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

(b) documented adverse pollution trends.

(34) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for point sources and load allocations for both nonpoint sources and natural background sources established at a level necessary to achieve compliance with applicable surface water quality standards.

(35) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

(36) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources.

(37) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

(38) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

(39) "Watershed advisory group" means a group of individuals who wish to participate in an advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in an advisory capacity as provided in 75-5-704.

History: En. Sec. 122, Ch. 197, L. 1967; amd. Sec. 2, Ch. 21, L. 1971; amd. Sec. 1, Ch. 506, L. 1973; amd. Sec. 59, Ch. 349, L. 1974; amd. Sec. 2, Ch. 455, L. 1975; amd. Sec. 3, Ch. 308, L. 1977; amd. Sec. 1, Ch. 444, L. 1977; R.C.M. 1947, 69-4802; amd. Sec. 1, Ch. 337, L. 1993; amd. Sec. 1, Ch. 340, L. 1993; amd. Sec. 1, Ch. 595, L. 1993; amd. Sec. 184, Ch. 418, L. 1995; amd. Sec. 1, Ch. 495, L. 1995; amd. Sec. 3, Ch. 497, L. 1995; amd. Sec. 1, Ch. 501, L. 1995; amd. Secs. 524, 568, Ch. 546, L. 1995; amd. Sec. 1, Ch. 541, L. 1997; amd. Sec. 1, Ch. 267, L. 2009; amd. Sec. 6, Ch. 445, L. 2009; amd. Sec. 8, Ch. 474, L. 2009; amd. Sec. 1, Ch. 267, L. 2011; amd. Sec. 2, Ch. 398, L. 2011; amd. Sec. 29, Ch. 324, L. 2021; amd. Sec. 5, Ch. 342, L. 2021; amd. Sec. 3, Ch. 409, L. 2021; amd. Sec. 61, Ch. 503, L. 2021; amd. Sec. 3, Ch. 338, L. 2025; amd. Sec. 1, Ch. 712, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 3, Ch. 338, L. 2025. Amendment effective May 1, 2025.

See 2025 Session Law for amendment made by sec. 1, Ch. 712, L. 2025. Amendment effective May 13, 2025.

Contingent Effective Date: Section 31(1), Ch. 474, L. 2009, provided that this section is effective on the date that the board of oil and gas conservation is granted primacy to administer activities at carbon dioxide sequestration wells by the United States environmental protection agency.

75-5-104. Special applicability. This chapter applies to drainage or seepage from all sources, including that from artificial, privately owned ponds or lagoons, if such drainage or seepage may reach other state waters in a condition which may pollute the other state waters.

History: En. Sec. 124, Ch. 197, L. 1967; amd. Sec. 3, Ch. 21, L. 1971; R.C.M. 1947, 69-4804.

Cross-References

Waters property of state, Art. IX, sec. 3, Mont. Const.

75-5-105. Confidentiality of records. Except as provided in 80-15-108, any information concerning sources of pollution that is furnished to the board or department or that is obtained by either of them is a matter of public record and open to public use. However, any information unique to the owner or operator of a source of pollution that would, if disclosed, reveal methods or processes entitled to protection as trade secrets must be maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file a declaratory judgment action to establish the existence of a trade secret if the owner or operator wishes the information to remain confidential. The department must be served in the action and may intervene as a party. Any information not intended to be public when submitted to the board or department must be submitted in writing and clearly marked as confidential. The data describing physical and chemical characteristics of a waste discharged to state waters may not be considered confidential. The board may use any information in compiling or publishing analyses or summaries relating to water pollution if the analyses or summaries do not identify any owner or operator of a source of pollution or reveal any information that is otherwise made confidential by this section.

History: En. Sec. 16, Ch. 21, L. 1971; amd. Sec. 10, Ch. 455, L. 1975; R.C.M. 1947, 69-4822; amd. Sec. 25, Ch. 668, L. 1989; amd. Sec. 2493, Ch. 56, L. 2009; amd. Sec. 2, Ch. 267, L. 2011; amd. Sec. 6, Ch. 342, L. 2021.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Uniform Declaratory Judgments Act, Title 27, ch. 8.

Uniform Trade Secrets Act, Title 30, ch. 14, part 4.

75-5-106. Interagency cooperation — enforcement authorization. (1) The council, the board and the department may require the use of records of all state agencies and may seek the assistance of the agencies. When the department's review of a permit application submitted under another chapter or title is required or requested, the department shall coordinate the review under this chapter with the review conducted by the agency or unit under the other chapter, following the time schedule for that review. State, county, and municipal officers and employees, including sanitarians and other employees of local departments of health, shall cooperate with the council, the board and the department in furthering the purposes of this chapter, so far as is practicable and consistent with their other duties.

(2) The department may authorize a local water quality district established according to the provisions of Title 7, chapter 13, part 45, to enforce the provisions of this chapter and rules adopted under this chapter on a case-by-case basis. If a local water quality district requests the authorization, the local water quality district shall present appropriate documentation to the department that a person is violating permit requirements established by the department or may be causing pollution, as defined in 75-5-103, of state waters or placing or causing to be placed wastes in a location where they are likely to cause pollution of state waters. The department may adopt rules regarding the granting of enforcement authority to local water quality districts.

History: **En. Sec. 21, Ch. 21, L. 1971; R.C.M. 1947, 69-4827; amd. Sec. 25, Ch. 357, L. 1991; amd. Sec. 4, Ch. 497, L. 1995; amd. Sec. 30, Ch. 324, L. 2021.**

75-5-107. Venue generally. Except as otherwise provided by this chapter, any challenge to an action taken by the department or to a decision issued by the board pursuant to this chapter must be brought in the district court in the county where the activity that is the subject of the challenge is proposed to occur. If an activity is proposed to occur or will occur in more than one county, the challenge may be brought in the district court in any of the counties where the activity is proposed to occur or will occur.

History: **En. Sec. 1, Ch. 535, L. 2021.**

Part 2
Administrative Agencies

75-5-201. Rules authorized. (1) (a) The department shall, except as provided in 75-5-411 and subject to the provisions of 75-5-203, adopt rules for the administration of this chapter.

(b) The department shall adopt rules that describe the location and the times of the year when suction dredging is permissible. These rules may be adopted only after consultation with the local conservation districts in the areas subject to the rule.

(2) The department's rules may include a fee schedule or system for assessment of administrative penalties as provided under 75-5-611.

History: **En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(1)(g); amd. Sec. 1, Ch. 504, L. 1993; amd. Sec. 11, Ch. 471, L. 1995; amd. Sec. 1, Ch. 468, L. 2003; amd. Sec. 2, Ch. 327, L. 2017; amd. Sec. 31, Ch. 324, L. 2021.**

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

Local boards of health — powers and duties, 50-2-116.

75-5-202. Board hearings. The board shall hold hearings necessary for the proper administration of this chapter or, in the case of permit issuance hearings, delegate this function to the department.

History: **En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(1)(f).**

Cross-References

Montana Administrative Procedure Act — contested case hearings, Title 2, ch. 4, part 6.

75-5-203. State regulations no more stringent than federal regulations or guidelines. (1) Except as provided in subsections (2) through (5) or unless required by state law, the department may not adopt a rule to implement 75-5-301, 75-5-302, 75-5-303, or 75-5-310 that is more stringent than the comparable federal regulations or guidelines that

address the same circumstances. The department may incorporate by reference comparable federal regulations or guidelines.

(2) The department may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if the department makes a written finding after a public hearing and public comment and based on evidence in the record that:

(a) the proposed state standard or requirement protects public health or the environment of the state; and

(b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference pertinent, ascertainable, and peer-reviewed scientific studies contained in the record that forms the basis for the department's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.

(4) (a) A person affected by a rule that the person believes to be more stringent than comparable federal regulations or guidelines may petition the board to review the rule. If the board determines that the rule is more stringent than comparable federal regulations or guidelines, the department shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 8 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The department may charge a petition filing fee in an amount not to exceed $250.

(b) A person may also petition the board for a rule review under subsection (4)(a) if the department adopts a rule in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted department rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1).

History: En. Sec. 1, Ch. 471, L. 1995; amd. Sec. 2, Ch. 378, L. 2015; amd. Sec. 32, Ch. 324, L. 2021.

75-5-204 through 75-5-210 reserved.

75-5-211. Department to administer chapter. (1) Except as otherwise provided, the department is responsible for administration of this chapter.

(2) The department may use its personnel and those of the local departments of health as necessary to administer this chapter.

History: En. Sec. 125, Ch. 197, L. 1967; amd. Sec. 4, Ch. 21, L. 1971; amd. Sec. 60, Ch. 349, L. 1974; R.C.M. 1947, 69-4805.

Cross-References

Department of Public Health and Human Services — rules regarding water and sewage requirements for hotels, 50-51-103.

75-5-212. Department research and information. (1) The department shall:

(a) collect and furnish information relating to the prevention and control of water pollution;

(b) conduct or encourage necessary research and demonstrations concerning water pollution;

(c) encourage and provide for the use of appropriate new methods, materials, and models in evaluation, design, and construction as they relate to water quality.

(2) (a) In the implementation of subsection (1)(a), the department shall, at intervals not to exceed 5 years, compile and when necessary, update department organizational information, statutes, rules, permitting information, standards, and bulletins related to water quality. The first compilation must be complete and made available in hard copy and for electronic access by January 31, 2000.

(b) The department may charge a reasonable fee for purchase of the hard-copy compilation, not to exceed the department's costs for copying, assembly, and distribution of the compilation.

History: En. Sec. 7, Ch. 21, L. 1971; amd. Sec. 3, Ch. 506, L. 1973; amd. Sec. 63, Ch. 349, L. 1974; amd. Sec. 6, Ch. 455, L. 1975; amd. Sec. 4, Ch. 444, L. 1977; R.C.M. 1947, 69-4809.1(1)(d), (1)(e); amd. Sec. 1, Ch. 511, L. 1999.

75-5-213. Comprehensive plan for prevention and control of water pollution. The department shall advise, consult, and cooperate with other states, other state and federal agencies, affected groups, political subdivisions, and industries in the formulation of a comprehensive plan to prevent and control pollution.

History: En. Sec. 7, Ch. 21, L. 1971; amd. Sec. 3, Ch. 506, L. 1973; amd. Sec. 63, Ch. 349, L. 1974; amd. Sec. 6, Ch. 455, L. 1975; amd. Sec. 4, Ch. 444, L. 1977; R.C.M. 1947, 69-4809.1(1)(h).

75-5-214. Pipeline reporting requirements. (1) By January 1, 2016, the department of environmental quality shall compile information in accordance with subsection (2) for all pipelines that intersect or cross a navigable river in Montana.

(2) The compilation, at a minimum, should include to the extent the data is available from the federal government or another source:

(a) standard pipeline identification information, as determined by the department;

(b) a pipeline's size;

(c) the commodity transported by the pipeline;

(d) navigable rivers intersected or crossed by the pipeline;

(e) the distance between shutoff valves that isolate the segment of a pipeline that crosses a navigable river from the balance of the pipeline;

(f) the county in which a pipeline crosses a navigable river; and

(g) the depth of coverage when the pipeline was installed.

(3) (a) The department of environmental quality shall make the information collected in accordance with subsection (2) available to the public on the agency's website.

(b) The department of natural resources and conservation shall provide a link on its website to the information provided by the department of environmental quality in accordance with subsection (3)(a).

(4) For the purposes of this section, "pipeline" means a pipeline greater than or equal to 8 inches in inside diameter that transports oil, gas, or liquid.

History: En. Sec. 1, Ch. 332, L. 2015.

75-5-215 through 75-5-220 reserved.

75-5-221. Water pollution control advisory council — general. (1) The council provided for in 2-15-2107 shall select a presiding officer from among its members. The director of the department of environmental quality shall designate a member of the staff of the department to act as secretary to the council. The secretary shall keep records of all actions taken by the council.

(2) Meetings must be held at the call of the presiding officer or on written request of two or more members.

(3) Each member may, by filing with the secretary, designate a deputy or alternate to perform the member's duties.

(4) The council shall act only in an advisory capacity to the department on matters relating to water pollution.

(5) The director of the department may designate other persons to participate with council members in evaluating particular issues arising under this chapter that are brought before the council.

History: En. Sec. 132, Ch. 197, L. 1967; amd. Sec. 10, Ch. 21, L. 1971; amd. Sec. 64, Ch. 349, L. 1974; R.C.M. 1947, 69-4812; amd. Sec. 1, Ch. 297, L. 1995; amd. Sec. 185, Ch. 418, L. 1995.

75-5-222. State regulation for natural conditions. (1) The department may not apply a standard to a water body for water quality that is more stringent than the nonanthropogenic condition of the water body. For the parameters for which the applicable standards are more stringent than the nonanthropogenic condition, the standard is the nonanthropogenic condition of the parameter in the water body. The department shall implement the standard in a manner that provides for the water quality standards for downstream waters to be attained and maintained.

(2) (a) For water bodies where the standard is more stringent than the condition of the water body but subsection (1) is not applicable, the department shall adopt rules consistent with comparable federal rules and guidelines providing criteria and procedures for the department to issue variances from standards if:

(i) the condition cannot reasonably be expected to be remediated during the permit term for which the application for variance has been received; and

(ii) the discharge to which the variance applies would not materially contribute to the condition.

(b) A variance issued pursuant to subsection (2)(a) must be reviewed every 5 years and may be modified or terminated as a result of the review.

History: En. Sec. 1, Ch. 378, L. 2015; amd. Sec. 33, Ch. 324, L. 2021.

Part 3
Classification and Standards

Part Cross-References

Energy emergency — power of Governor to suspend pollution control standards, 90-4-310.

75-5-301. Classification and standards for state waters. Consistent with the provisions of 80-15-201 and this chapter, the department shall:

(1) establish the classification of all state waters in accordance with their present and future most beneficial uses, creating an appropriate classification for streams that, due to sporadic flow, do not support an aquatic ecosystem that includes salmonid or nonsalmonid fish;

(2) formulate and adopt standards of water quality, considering the economics of waste treatment and prevention. When rules are adopted regarding temporary standards, they must conform with the requirements of 75-5-312. Standards must meet the following requirements:

(a) for carcinogens, the water quality standard for protection of human health must be the value associated with an excess lifetime cancer risk level, assuming continuous lifetime exposure, not to exceed 1×10^{-3} in the case of arsenic and 1×10^{-5} for other carcinogens. However, if a standard established at a risk level of 1×10^{-3} for arsenic or 1×10^{-5} for other carcinogens violates the maximum contaminant level obtained from 40 CFR, part 141, then the maximum contaminant level must be adopted as the standard for that carcinogen.

(b) standards for the protection of aquatic life do not apply to ground water.

(3) review, from time to time at intervals of not more than 3 years and, to the extent permitted by this chapter, revise established classifications of waters and adopted standards of water quality;

(4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the department be specifically identified and requiring that mixing zones have:

(a) the smallest practicable size;

(b) a minimum practicable effect on water uses; and

(c) definable boundaries;

(5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not limited to rules that:

(a) provide a procedure for department review and authorization of a feasibility allowance;

(b) establish criteria for the following:

(i) determining important economic or social development; and

(ii) weighing the social and economic importance to the public of allowing the proposed project against the cost to society associated with a loss of water quality;

(c) establish criteria for determining whether a proposed activity or class of activities, in addition to those activities identified in 75-5-317, will result in nonsignificant changes in water quality for any parameter in order that those activities are not required to undergo review under 75-5-303(3). These criteria must be established in a manner that generally:

(i) equates significance with the potential for harm to human health, a beneficial use, or the environment;

(ii) considers both the quantity and the strength of the pollutant;

(iii) considers the length of time the degradation will occur;

(iv) considers the character of the pollutant so that greater significance is associated with carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less harmful or less persistent.

(d) provide that changes of nitrate as nitrogen in ground water are nonsignificant if the discharge will not cause degradation of surface water and the predicted concentration of nitrate as nitrogen at the boundary of the ground water mixing zone does not exceed:

(i) 7.5 milligrams per liter from sources other than sewage;

(ii) 5.0 milligrams per liter from sewage discharged from a system that does not use level two treatment in an area where the ground water nitrate as nitrogen is 5.0 milligrams per liter or less;

(iii) 7.5 milligrams per liter from sewage discharged from a system using level two treatment, which must be defined in the rules; or

(iv) 7.5 milligrams per liter from sewage discharged from a system in areas where the ground water nitrate as nitrogen level exceeds 5.0 milligrams per liter primarily from sources other than human waste; and

(e) for septic system discharges that are not subject to ground water permitting requirements under 75-5-401, establish criteria to determine when the discharges result in nonsignificant changes in surface water quality in order that those discharges are not required to undergo review under 75-5-303(3) and no further analysis under law or rule is required. The criteria must:

(i) be adopted by rule before July 1, 2024; and

(ii) be developed in a manner that generally considers soil type, mixing zone dilution and nitrogen credits, horizontal distance between the discharge and the surface water in the direction of ground water flow, and elevation, including:

(A) adopt surface water impacts for low flow conditions based on mixing zone dilution concentrations and other credits for nitrogen;

(B) credit nitrogen degradation at the drainfield and riparian zone attenuation based on soil type;

(C) exempt surface water body impacts when drainfield is lower in elevation than the waterbody;

(D) limit the adjacent to surface water trigger analysis to a maximum of 1/4 or 1/2 mile from the drainfield to a surface water, depending on soil type; and

(E) create nonsignificant surface water impact categories of 500 or more feet from the surface water that consider soil texture, ground water depths and other pertinent information.

(6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute guidelines for granting or denying applications for authorization to degrade high-quality waters under the policy established in 75-5-303(2).

(7) adopt rules to implement this section.

History: **En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(part); amd. Sec. 26, Ch. 668, L. 1989; amd. Sec. 2, Ch. 595, L. 1993; (7)En. Sec. 5, Ch. 595, L. 1993; amd. Sec. 5, Ch. 497, L. 1995; amd. Sec. 4, Ch. 501, L. 1995; amd. Sec. 1, Ch. 539, L. 1995; amd. Sec. 1, Ch. 40, L. 1997; amd. Sec. 5, Ch. 195, L. 1999; amd. Sec. 1, Ch. 588, L. 1999; amd. Sec. 34, Ch. 324, L. 2021; amd. Sec. 1, Ch. 752, L. 2023; amd. Sec. 2, Ch. 712, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 712, L. 2025. Amendment effective May 13, 2025.

2025 Amendment of Administrative Rules: Section 7, Ch. 712, L. 2025, directed the Department of Environmental Quality to amend ARM 17.30.707 and 17.30.708 to add references to feasibility allowances. Effective May 13, 2025.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

75-5-302. Revising classifications in accordance with existing, present, and future most beneficial uses of water bodies. When the department is presented with facts indicating that a body of water is not properly classified in accordance with its existing, present, and future most beneficial uses, the department shall, within 90 days, evaluate the facts. If the department determines that the water body is not properly classified, the department shall initiate rulemaking to properly classify the water body in accordance with its existing, present, and future most beneficial uses. Action pursuant to this section is subject to 75-5-307.

History: **En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(1)(c)(i); amd. Sec. 6, Ch. 497, L. 1995; amd. Sec. 2, Ch. 539, L. 1995; amd. Sec. 1, Ch. 131, L. 2015; amd. Sec. 35, Ch. 324, L. 2021.**

75-5-303. Nondegradation policy. (1) Existing uses of state waters and the level of water quality necessary to protect those uses must be maintained and protected.

(2) Unless authorized by the department under subsection (3) or exempted from review under 75-5-317, the quality of high-quality waters must be maintained.

(3) The department may allow lower water quality through a feasibility allowance in high-quality waters when it has been affirmatively demonstrated by a preponderance of evidence to the department that:

(a) a feasibility allowance is necessary because there are no economically, environmentally, and technologically feasible modifications to the proposed project that would result in no degradation;

(b) the proposed project will result in important economic or social development in the area that the high-quality waters are located;

(c) existing and anticipated use of state waters will be fully protected; and

(d) the least degrading water quality protection practices determined by the department to be economically, environmentally, and technologically feasible will be fully implemented by the applicant prior to and during the proposed activity.

(4) The department shall issue a preliminary decision either denying or authorizing the feasibility allowance and shall provide public notice and a 30-day comment period prior to issuing a final decision. The department's preliminary and final decisions must include:

(a) a statement of the basis for the decision; and

(b) a detailed description of all conditions applied to a feasibility allowance, including, when applicable, monitoring requirements, required water protection practices, reporting requirements, effluent limits, designation of the mixing zones, the limits of the authorized feasibility allowance, and methods of determining compliance with the feasibility allowance.

(5) An interested person wishing to challenge a final department decision may request a hearing before the board within 30 days of the final department decision. The contested case procedures of Title 2, chapter 4, part 6, apply to a hearing under this section.

(6) Periodically, but not more often than every 5 years, the department may review feasibility allowances for state waters. Following the review, the department may, after timely notice and opportunity for hearing, modify the feasibility allowance if the department determines that an economically, environmentally, and technologically feasible modification to the development exists. The decision by the department to modify a feasibility allowance may be appealed to the board.

(7) The department may not issue a feasibility allowance for state waters that are classified as outstanding resource waters.

(8) The department shall adopt rules to implement this section.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(1)(c)(ii), (1)(c)(iii); amd. Sec. 3, Ch. 595, L. 1993; (7)En. Sec. 5, Ch. 595, L. 1993; amd. Sec. 2, Ch. 495, L. 1995; amd. Sec. 5, Ch. 501, L. 1995; amd. Sec. 36, Ch. 324, L. 2021; amd. Sec. 3, Ch. 712, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 712, L. 2025. Amendment effective May 13, 2025.

2025 Amendment of Administrative Rules: Section 7, Ch. 712, L. 2025, directed the Department of Environmental Quality to amend ARM 17.30.707 and 17.30.708 to add references to feasibility allowances. Effective May 13, 2025.

Cross-References

Outstanding resource water classification, 75-5-316.

Nonsignificant activities, 75-5-317.

Action for damage to water supply caused by metal mining operation, 82-4-355.

75-5-304. Adoption of standards — pretreatment, effluent, performance. (1) The department shall:

(a) adopt pretreatment standards for wastewater discharged into a municipal disposal system;

(b) adopt effluent standards as defined in 75-5-103;

(c) adopt toxic effluent standards and prohibitions;

(d) establish standards of performance for new point source discharges; and

(e) adopt rules necessary to ensure the primacy of the department to regulate cooling water intake structures under 33 U.S.C. 1326(b).

(2) In taking action under subsection (1), the department shall ensure that the standards are cost-effective and economically, environmentally, and technologically feasible.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(1)(h); amd. Sec. 7, Ch. 497, L. 1995; amd. Sec. 1, Ch. 156, L. 2013; amd. Sec. 37, Ch. 324, L. 2021.

75-5-305. Adoption of requirements for treatment of wastes — variance procedure — appeals. (1) The department may establish minimum requirements for the treatment of wastes. For cases in which the federal government has adopted technology-based treatment requirements for a particular industry or activity in 40 CFR, chapter I, subchapter N, the department shall adopt those requirements by reference. To the extent that the federal government has not adopted minimum treatment requirements for a particular industry or activity, the department may do so, through rulemaking, for parameters likely to affect beneficial uses, ensuring that the requirements are cost-effective and economically, environmentally, and technologically feasible. Except for the technology-based treatment requirements set forth in 40 CFR, chapter I, subchapter N, minimum treatment may not be required to address the discharge of a parameter when the discharge is considered nonsignificant under rules adopted pursuant to 75-5-301.

(2) (a) The department shall establish minimum requirements for the control and disposal of sewage from private and public buildings, including standards and procedures for variances from the requirements.

(b) For gray water reuse systems, the department shall establish rules that:

(i) allow the diversion of gray water from wastewater treatment systems and limit the amount of gray water flow allowed by permit;

(ii) address the uses of gray water, including when and how gray water may be applied to land; and

(iii) include any other provisions that the department considers necessary to ensure that gray water reuse systems comply with laws and regulations and protect public health and the environment.

(3) An applicant for a variance from minimum requirements adopted by a local board of health pursuant to 50-2-116 may appeal the local board of health's final decision to the department by submitting a written request for a hearing within 30 days after the decision. The written request must describe the activity for which the variance is requested, include copies of all documents submitted to the local board of health in support of the variance, and specify the reasons for the appeal of the local board of health's final decision.

(4) The department shall conduct a hearing on the request pursuant to Title 2, chapter 4, part 6. Within 30 days after the hearing, the department shall grant, conditionally grant, or deny the variance. The department shall base its decision on the department's standards for a variance.

(5) A decision of the department pursuant to subsection (4) is appealable to district court under the provisions of Title 2, chapter 4, part 7.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(2)(b); amd. Sec. 1, Ch. 479, L. 1991; amd. Sec. 8, Ch. 497, L. 1995; amd. Sec. 10, Ch. 150, L. 2007; amd. Sec. 3, Ch. 312, L. 2007; amd. Sec. 1, Ch. 73, L. 2009; amd. Sec. 38, Ch. 324, L. 2021.

75-5-306. Purer than natural unnecessary — dams — definition. (1) It is not necessary that wastes be treated to a purer condition than the natural condition of the receiving stream as long as the minimum treatment requirements established under this chapter are met.

(2) "Natural" refers to conditions or material present from runoff or percolation over which humans have no control or from developed land where all reasonable land, soil, and water conservation practices have been applied. Conditions resulting from the reasonable operation of dams on July 1, 1971, are natural.

History: En. Sec. 121, Ch. 197, L. 1967; amd. Sec. 1, Ch. 21, L. 1971; amd. Sec. 1, Ch. 455, L. 1975; R.C.M. 1947, 69-4801(2); amd. Sec. 2494, Ch. 56, L. 2009.

75-5-307. Hearings required for classification, formulation of standards, and rulemaking. (1) Before streams are classified or standards established or modified or rules made, revoked, or modified, the department shall hold a public hearing. Notice of the hearing specifying the waters concerned and the classification, standards, or modification of them and

any rules proposed to be made, revoked, or modified must be published at least once a week for 3 consecutive weeks in a daily newspaper of general circulation in the area affected. Notice must be mailed directly to persons the department believes may be affected by the proposed action. The council must be given not less than 30 days prior to first publication to comment on the proposed action.

(2) At a hearing held under this section, the department shall give all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. The department may make rules for the orderly conduct of the hearing but need not require compliance with the rules of evidence or procedure applicable to hearings held under 75-5-611.

History: En. Sec. 134, Ch. 197, L. 1967; amd. Sec. 12, Ch. 21, L. 1971; R.C.M. 1947, 69-4814; amd. Sec. 39, Ch. 324, L. 2021.

Cross-References

Montana Administrative Procedure Act — rulemaking, 2-4-302.

75-5-308. Short-term water authorizations — water quality standards. (1) Because these activities promote the public interest, the department may, if necessary, authorize short-term exemptions from the water quality standards for the following activities:

(a) emergency remediation activities that have been approved, authorized, or required by the department; and

(b) application of a pesticide that is registered by the United States environmental protection agency pursuant to 7 U.S.C. 136(a) when it is used to control nuisance aquatic organisms or to eliminate undesirable and nonnative aquatic species.

(2) An authorization must include conditions that minimize, to the extent practicable, the magnitude of any change in the concentration of the parameters affected by the activity and the length of time during which any change may occur. The authorization must also include conditions that prevent significant risk to public health and that ensure that existing and designated uses of state water are protected and maintained upon completion of the activity. Authorizations issued under this section may include conditions that require water quality or quantity monitoring and reporting. In the performance of its responsibilities under this section, the department may negotiate operating agreements with other departments of state government that are intended to minimize duplication in review of activities eligible for authorizations under this section.

(3) An authorization to use a pesticide does not relieve a person from the duty to comply with Title 80, chapters 8 and 15. The department may not authorize an exemption from water quality standards for an activity that requires a discharge permit under rules adopted pursuant to 75-5-401.

History: En. Sec. 2, Ch. 340, L. 1993; amd. Sec. 2, Ch. 588, L. 1999; amd. Sec. 40, Ch. 324, L. 2021.

75-5-309. Repealed. Sec. 3, Ch. 378, L. 2015.

History: En. Sec. 1, Ch. 497, L. 1995.

75-5-310. Site-specific standards of water quality for aquatic life. (1) Notwithstanding any other provisions of this chapter and except as provided in subsection (2), the department, upon application by a permit applicant, permittee, or person potentially liable under any state or federal environmental remediation statute, shall adopt site-specific standards of water quality for aquatic life, both acute and chronic, as the standards of water quality required under 75-5-301(2) and (3). The site-specific standards of water quality must be developed in accordance with the procedures set forth in draft or final federal regulations, guidelines, or criteria.

(2) If the department, based upon its review of an application submitted under subsection (1) and sound scientific, technical, and available site-specific evidence, determines that the development of site-specific criteria in accordance with draft or final federal regulations, guidelines, or criteria would not be protective of beneficial uses, the department, within 90 days of the submission of an application under subsection (1), shall notify the applicant in writing of its determination and of all additional procedures that the applicant is required to comply with in the development of site-specific standards of water quality under this section. If there is a dispute between the department and the applicant as to the additional procedures, the board shall, on the request of the department or the applicant, hear and determine the dispute. The board's decision must be based on sound scientific, technical, and available site-specific evidence.

History: En. Sec. 2, Ch. 497, L. 1995; amd. Sec. 41, Ch. 324, L. 2021.

75-5-311. Local water quality districts — department approval — local water quality programs. (1) A county that establishes a local water quality district according to the procedures specified in Title 7, chapter 13, part 45, shall, in consultation with the department, undertake planning and information-gathering activities necessary to develop a proposed local water quality program.

(2) A county may implement a local water quality program in a local water quality district if the program is approved by the department after a hearing conducted under 75-5-202.

(3) In approving a local water quality program, the department shall determine that the program is consistent with the purposes and requirements of Title 75, chapter 5, and that the program will be effective in protecting, preserving, and improving the quality of surface water and ground water, considering the administrative organization, staff, and financial and other resources available to implement the program.

(4) Subject to department approval, the commissioners and the governing bodies of cities and towns that participate in a local water quality district may adopt local ordinances to regulate the following specific facilities and sources of pollution:

(a) onsite wastewater disposal facilities;

(b) storm water runoff from paved surfaces;

(c) service connections between buildings and publicly owned sewer mains;

(d) facilities that use or store halogenated and nonhalogenated solvents, including hazardous substances that are referenced in 40 CFR 261.31, United States environmental protection agency hazardous waste numbers F001 through F005, as amended; and

(e) internal combustion engine lubricants.

(5) (a) For the facilities and sources of pollution included in subsection (4) and consistent with the provisions of subsection (6), the local ordinances may:

(i) be compatible with or more stringent or more extensive than the requirements imposed by 75-5-304, 75-5-305, and 75-5-401 through 75-5-404 and rules adopted under those sections to protect water quality, establish waste discharge permit requirements, and establish best management practices for substances that have the potential to pollute state waters;

(ii) provide for administrative procedures, administrative orders and actions, and civil enforcement actions that are consistent with 75-5-601 through 75-5-604, 75-5-611 through 75-5-616, 75-5-621, and 75-5-622 and rules adopted under those sections; and

(iii) provide for civil penalties not to exceed $1,000 per violation, provided that each day of violation of a local ordinance constitutes a separate violation, and criminal penalties not to exceed $500 per day of violation or imprisonment for not more than 30 days, or both.

(b) Department approval of an ordinance or local law that is more stringent than the comparable state law is subject to the provisions of 75-5-203.

(6) The local ordinances authorized by this section may not:

(a) duplicate the department's requirements and procedures relating to permitting of waste discharge sources and enforcement of water quality standards;

(b) regulate any facility or source of pollution to the extent that the facility or source is:

(i) required to obtain a permit or other approval from the department or federal government or is the subject of an administrative order, a consent decree, or an enforcement action pursuant to Title 75, chapter 5, part 4; Title 75, chapter 6; Title 75, chapter 10; the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 through 9675, as amended; or federal environmental, safety, or health statutes and regulations;

(ii) exempted from obtaining a permit or other approval from the department because the facility or source is required to obtain a permit or other approval from another state agency or is the subject of an enforcement action by another state agency; or

(iii) subject to the provisions of Title 80, chapter 8 or chapter 15.

(7) If the boundaries of a district are changed after the department has approved the local water quality program for the district, the board of directors of the local water quality district shall submit a program amendment to the department and obtain department approval of the program amendment before implementing the local water quality program in areas that have been added to the district.

(8) The department shall monitor the implementation of local water quality programs to ensure that the programs are adequate to protect, preserve, and improve the quality of the surface water and ground water and are being administered in a manner consistent with the purposes and requirements of Title 75, chapter 5.

(9) If the department determines that a local water quality program is inadequate to protect, preserve, and improve the quality of the surface water and ground water in the local water quality district or that the program is being administered in a manner inconsistent with Title 75, chapter 5, the department shall give notice and conduct a hearing on the matter.

(10) If after the hearing the department determines that the program is inadequate to protect, preserve, and improve the quality of the surface water and ground water in the local water quality district or that it is not being administered in a manner consistent with the purposes of Title 75, chapter 5, the department shall require that necessary corrective measures be taken within a reasonable time, not to exceed 60 days.

(11) If an ordinance adopted under this section conflicts with a requirement imposed by the department's water quality program, the department's requirement supersedes the local ordinance.

(12) If the department finds that, because of the complexity or magnitude of a particular water pollution source, the control of the source is beyond the reasonable capability of a local water quality district or may be more efficiently and economically performed at the state level, the department may assume and retain control over the source. A charge may not be assessed against the local water quality district for that source. Findings made under this subsection may be based on the nature of the source involved or on the source's relationship to the size of the community in which it is located.

History: En. Sec. 24, Ch. 357, L. 1991; amd. Sec. 12, Ch. 471, L. 1995; amd. Sec. 42, Ch. 324, L. 2021.

Cross-References

Pesticides, Title 80, ch. 8.

Montana Agricultural Chemical Ground Water Protection Act, Title 80, ch. 15.

75-5-312. Temporary water quality standards. (1) The department may, on its own accord or upon a petition for rulemaking, as provided in 2-4-315, by a person, including a permit applicant or permittee, temporarily modify a water quality standard for a specific water body or segment on a parameter-by-parameter basis in those instances in which substantive information indicates that the water body or segment is not supporting its designated uses. When the department adopts temporary standards, the goal is to improve water quality to the point at which all the beneficial uses designated for that water body or segment are supported.

(2) As a condition for establishing temporary water quality standards for a particular water body or segment, the department or the petitioner, as applicable, shall prepare a support document and a preliminary implementation plan for use by the department in determining whether to adopt the proposed temporary water quality standards. A person shall submit a support document and a preliminary implementation plan to the department for its review at least 60 days prior to filing a petition with the department requesting the adoption of temporary water quality standards.

(3) The support document prepared by the department or the petitioner, as applicable, must describe:

(a) the chemical, biological, and physical condition of the water body or segment;

(b) the specific water quality limiting factors affecting the water body or segment;

(c) the existing water quality standards that are not being achieved;

(d) the temporary modifications to the existing water quality standards being requested;

(e) existing beneficial uses; and

(f) the designated uses considered attainable in the absence of the water quality limiting factors.

(4) The preliminary implementation plan prepared by the department or the petitioner, as applicable, must contain:

(a) a description of the proposed actions that will eliminate the water quality limiting factors identified in subsection (3)(b) to the extent considered achievable; and

(b) a schedule for implementing the proposed actions that ensures that the existing water quality standards for the parameter or parameters at issue are met as soon as reasonably practicable.

(5) Within 30 days after the department's adoption of temporary water quality standards, the department or the petitioner, as applicable, shall:

(a) modify the preliminary implementation plan and schedule to reflect the requirements and timeframe adopted by the department for the temporary standards; and

(b) develop a detailed work plan describing the implementation activities that will be conducted during the first field season of the temporary standards. The work plan must be approved by the director of the department.

(6) By March 1 of each year that the temporary water quality standards are in effect, the department or the petitioner, as applicable, shall submit a detailed work plan describing the implementation activities that will be conducted during that season. The annual work plans must be approved by the director of the department. The department shall maintain copies of the implementation plan, schedule, and annual work plans and any modifications to those plans and schedule.

(7) Upon the department's adoption of a temporary water quality standard, the department shall ensure that reasonable conditions and limitations designed to achieve compliance with the implementation plan are established in appropriate discharge permits.

(8) (a) A temporary modification of a water quality standard may not result in adverse impacts to existing beneficial uses or be established for a total period longer than 20 years.

(b) During the period of the temporary modification, the department may not allow a discharge that will cause overall water quality to become worse than the overall quality of the water body or segment prior to the discharge.

(9) If a state water is designated as having temporary standards, the department shall report at least every 3 years regarding whether adequate efforts have been made to implement the plans submitted as the basis for the temporary standards.

(10) The department shall review the temporary standards and implementation plan at least every 3 years at a public hearing for which notice and an opportunity for comment have been provided. During this review, the department shall consider the progress made in restoring water quality to a level that achieves the goal of the temporary water quality standards. The department may terminate or modify the temporary standards based on information submitted at the time of review.

(11) The department shall terminate a temporary standard for a parameter if:

(a) values for the modified parameter or parameters improve to conditions that support all designated uses for that classification;

(b) the state water for which the temporary standard is adopted is reclassified as provided for in 75-5-302; or

(c) the plan submitted in support of the temporary water quality standard is not being implemented according to the plan's schedule or modifications to that plan or schedule made by the department.

(12) The department may modify the implementation plan if there is convincing evidence that the plan needs modification.

(13) If a temporary standard for a parameter in a particular state water is terminated because the plan submitted in support of the temporary water quality standard is not being implemented according to the plan's schedule or modifications to that schedule made by the department, a person may request a new temporary standard by submitting both a petition for rulemaking and an implementation plan that meet the requirements of subsection (4). However, the department may not adopt another temporary standard for the parameter in the state water that would cumulatively be in effect for a total period longer than 20 years for the parameter in the state water.

History: En. Sec. 3, Ch. 539, L. 1995; amd. Sec. 1, Ch. 384, L. 2001; amd. Sec. 43, Ch. 324, L. 2021.

75-5-313. Repealed. Sec. 9, Ch. 342, L. 2021.

History: En. Sec. 2, Ch. 267, L. 2009; amd. Sec. 3, Ch. 267, L. 2011; amd. Sec. 5, Ch. 122, L. 2015.

75-5-314. Repealed. Sec. 9, Ch. 342, L. 2021.
History: En. Sec. 4, Ch. 267, L. 2011.

75-5-315. Outstanding resource waters — statement of purpose. (1) The legislature, understanding the requirements of applicable federal law and the uniqueness of Montana's water resource, recognizes that certain state waters are of such environmental, ecological, or economic value that the state should, upon a showing of necessity, prohibit, to the greatest extent practicable, changes to the existing water quality of those waters. Outstanding resource waters must be afforded the greatest protection feasible under state law, after thorough examination.

(2) The purpose of 75-5-316 and this section is to provide this protection, when necessary, and to provide guidance to the department in establishing rules to accomplish that level of protection.

History: En. Sec. 2, Ch. 501, L. 1995; amd. Sec. 1, Ch. 208, L. 2003; amd. Sec. 45, Ch. 324, L. 2021.

75-5-316. Outstanding resource water classification — rules — criteria — limitations — procedure — definition. (1) As provided under the provisions of 75-5-301 and this section, the department may adopt rules regarding the classification of waters as outstanding resource waters.

(2) The department may not:

(a) grant a feasibility allowance under 75-5-303 in outstanding resource waters; or

(b) allow a new or increased point source discharge that would result in a permanent change in the water quality of an outstanding resource water.

(3) (a) A person may petition the department for rulemaking to classify state waters as outstanding resource waters. The department shall initially review a petition against the criteria identified in subsection (3)(c) to determine whether the petition contains sufficient credible information for the department to accept the petition.

(b) The department may reject a petition without further review if it determines that the petition does not contain the sufficient credible information required by subsection (3)(a). If the department rejects a petition under this subsection (3)(b), it shall specify in writing the reasons for the rejection and the petition's deficiencies.

(c) The department may not adopt a rule classifying state waters as outstanding resource waters until it accepts a petition and makes a written finding containing the provisions enumerated in subsection (3)(d) that, based on a preponderance of the evidence:

(i) the waters identified in the petition constitute an outstanding resource based on the criteria provided in subsection (4);

(ii) the increased protection under the classification is necessary to protect the outstanding resource identified under subsection (3)(a) because of a finding that the outstanding resource is at risk of having one or more of the criteria provided in subsection (4) compromised as a result of pollution; and

(iii) classification as an outstanding resource water is necessary because of a finding that there is no other effective process available that will achieve the necessary protection.

(d) The written finding provided for in subsection (3)(c) must:

(i) identify the criteria provided in subsection (4) that serve as justification for the determination that the water is an outstanding resource;

(ii) specifically identify the criteria that are at risk and explain why those criteria are at risk; and

(iii) specifically explain why other available processes, including the requirements of 75-5-303, will not achieve the necessary protection.

(4) The department shall consider the following criteria in determining whether certain state waters are outstanding resource waters. However, the department may determine that compliance with one or more of these criteria is insufficient to warrant classification of the water as an outstanding resource water. The department shall consider:

(a) whether the waters have been designated as wild and scenic;

(b) the presence of endangered or threatened species in the waters;

(c) the presence of an outstanding recreational fishery in the waters;

(d) whether the waters provide the only source of suitable water for a municipality or industry;

(e) whether the waters provide the only source of suitable water for domestic water supply; and

(f) other factors that indicate outstanding environmental or economic values not specifically mentioned in this subsection (4).

(5) Before accepting a petition, the department shall:

(a) publish a notice and brief description of the petition in a daily newspaper of general circulation in the area affected and make copies of the proposal available to the public. The cost of publication must be paid by the petitioner.

(b) provide for a 30-day written public comment period regarding whether the petition contains sufficient credible information, as provided in subsection (3)(b), prior to the hearing required in subsection (5)(c);

(c) hold a public hearing regarding the petition and its contents and allow further written and oral testimony at the hearing;

(d) issue a proposed decision, including:

(i) the written finding provided for in subsection (3)(c); and

(ii) the department's acceptance or rejection of the petition;

(e) provide for a 30-day public comment period regarding the department's proposed decision; and

(f) issue a final decision on acceptance or rejection of the petition, which must include a response to comments received by the department, and make copies of this decision available to the public.

(6) (a) After acceptance of a petition, the department shall prepare an environmental impact statement, as provided under Title 75, chapter 1, part 2, and this section.

(b) (i) The petitioner is responsible for all of the costs associated with gathering and compiling data and information, and completing the environmental impact statement.

(ii) Before the department may initiate work on the environmental impact statement, the petitioner shall pay the estimated cost of completing the environmental impact statement, as determined by the department.

(iii) Upon completion of the environmental impact statement, the petitioner shall pay the department any costs that exceeded the estimated cost. If the cost of the environmental impact statement was less than the estimated cost paid by the petitioner, the department shall reimburse the difference to the petitioner.

(iv) The department may not grant or deny a petition until full payment for the environmental impact statement is received.

(7) The department shall consult with other relevant state agencies and county governments when reviewing outstanding resource water classification petitions.

(8) (a) After completion of an environmental impact statement and consultation with state agencies and local governments, the department may deny an accepted outstanding resource water classification petition if it finds that:

(i) the requirements of subsection (3)(c) have not been met; or

(ii) based on information available to the department from the environmental impact statement or otherwise, approving the outstanding resource waters classification petition would cause significant adverse environmental, social, or economic impacts.

(b) If the department denies the petition, it shall identify its reasons for petition denial.

(c) If the department grants the petition, the department shall initiate rulemaking to classify the waters as outstanding resource waters.

(9) A rule classifying state waters as outstanding resource waters under this section may be adopted but is not effective until approved by the legislature.

(10) The department may not postpone or deny an application for a feasibility allowance under 75-5-303 based on pending:

(a) department action on an outstanding resource water classification petition regarding those waters; or

(b) legislative approval of department action designating those waters as outstanding resource waters.

(11) As used in this section, "petitioner" means an individual, corporation, partnership, firm, association, or other private or public entity that petitions the department to adopt rules to classify waters as outstanding resource waters.

History: En. Sec. 3, Ch. 501, L. 1995; amd. Sec. 3, Ch. 588, L. 1999; amd. Sec. 2, Ch. 208, L. 2003; amd. Sec. 46, Ch. 324, L. 2021; amd. Sec. 4, Ch. 712, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 712, L. 2025. Amendment effective May 13, 2025.

Cross-References

Nondegradation policy, 75-5-303.

75-5-317. Nonsignificant activities. (1) The categories or classes of activities identified in subsection (2) cause changes in water quality that are nonsignificant because of their low potential for harm to human health or the environment and their conformance with the guidance found in 75-5-301(5)(c).

(2) The following categories or classes of activities are not subject to the provisions of 75-5-303:

(a) existing activities that are nonpoint sources of pollution as of April 29, 1993;

(b) activities that are nonpoint sources of pollution initiated after April 29, 1993, when reasonable land, soil, and water conservation practices are applied and existing and anticipated beneficial uses will be fully protected;

(c) use of agricultural chemicals in accordance with a specific agricultural chemical ground water management plan promulgated under 80-15-212, if applicable, or in accordance with an environmental protection agency-approved label and when existing and anticipated uses will be fully protected;

(d) changes in existing water quality resulting from an emergency or remedial activity that is designed to protect public health or the environment and is approved, authorized, or required by the department;

(e) changes in existing ground water quality resulting from treatment of a public water supply system, as defined in 75-6-102, or a public sewage system, as defined in 75-6-102, by chlorination or other similar means that is designed to protect the public health or the environment and that is approved, authorized, or required by the department;

(f) the use of drilling fluids, sealants, additives, disinfectants, and rehabilitation chemicals in water well or monitoring well drilling, development, or abandonment, if used according to department-approved water quality protection practices and if no discharge to surface water will occur;

(g) short-term changes in existing water quality resulting from activities authorized by the department pursuant to 75-5-308;

(h) land application of animal waste, domestic septage, or waste from public sewage treatment systems containing nutrients when the wastes are applied to the land in a beneficial manner, application rates are based on agronomic uptake of applied nutrients, and other parameters will not cause degradation;

(i) use of gray water, as defined in 75-5-325, from nonpublic gray water reuse systems for irrigation during the growing season in accordance with gray water reuse rules adopted pursuant to 75-5-305;

(j) incidental leakage of water from a public water supply system, as defined in 75-6-102, or from a public sewage system, as defined in 75-6-102, utilizing best practicable control technology designed and constructed in accordance with Title 75, chapter 6;

(k) discharges of water to ground water from water well or monitoring well tests, hydrostatic pressure and leakage tests, or wastewater from the disinfection or flushing of water mains and storage reservoirs, conducted in accordance with department-approved water quality protection practices;

(l) oil and gas drilling, production, abandonment, plugging, and restoration activities that do not result in discharges to surface water and that are performed in accordance with Title 82, chapter 10, or Title 82, chapter 11;

(m) short-term changes in existing water quality resulting from ordinary and everyday activities of humans or domesticated animals, including but not limited to:

(i) such recreational activities as boating, hiking, hunting, fishing, wading, swimming, and camping;

(ii) fording of streams or other bodies of water by vehicular or other means; and

(iii) drinking from or fording of streams or other bodies of water by livestock and other domesticated animals;

(n) coal and uranium prospecting that does not result in a discharge to surface water, that does not involve a test pit located in surface water or that may affect surface water, and that is performed in accordance with Title 82, chapter 4;

(o) solid waste management systems, motor vehicle wrecking facilities, and county motor vehicle graveyards licensed and operating in accordance with Title 75, chapter 10, part 2, or Title 75, chapter 10, part 5;

(p) hazardous waste management facilities permitted and operated in accordance with Title 75, chapter 10, part 4;

(q) metallic and nonmetallic mineral exploration that does not result in a discharge to surface water and that is permitted under and performed in accordance with Title 82, chapter 4, parts 3 and 4;

(r) stream-related construction projects or stream enhancement projects that result in temporary changes to water quality but do not result in long-term detrimental effects and that have been authorized pursuant to 75-5-318;

(s) diversions or withdrawals of water established and recognized under Title 85, chapter 2;

(t) the maintenance, repair, or replacement of dams, diversions, weirs, or other constructed works that are related to existing water rights and that are within wilderness areas so long as existing and anticipated beneficial uses are protected and as long as the changes in existing water quality relative to the project are short term;

(u) discharges of total phosphorus or total nitrogen that do not:

(i) create conditions that are toxic or harmful to human, animal, plant, and aquatic life;

(ii) create conditions that produce undesirable aquatic life; or

(iii) cause measurable changes in aquatic life; and

(v) any other activity that is nonsignficant because of its low potential for harm to human health or to the environment and its conformance with the guidance found in 75-5-301(5)(c).

History: En. Sec. 6, Ch. 501, L. 1995; amd. Sec. 4, Ch. 588, L. 1999; amd. Sec. 2, Ch. 73, L. 2009; amd. Sec. 7, Ch. 342, L. 2021.

Cross-References

Nondegradation policy, 75-5-303.

Legislative approval of siting of uranium conversion and enrichment facilities — conditions, 75-20-206.

75-5-318. Short-term water quality standards for turbidity. (1) Upon authorization by the department or the department of fish, wildlife, and parks pursuant to subsection (4), the short-term water quality standards for total suspended sediment and turbidity resulting from stream-related construction activities or stream enhancement projects are the narrative standards for total suspended sediment adopted by the department under 75-5-301. If a short-term narrative standard is authorized under this section, the numeric standard for turbidity adopted by the department under 75-5-301 does not apply to the affected water body during the term of the narrative standard.

(2) The department shall review each application for short-term standards on a case-by-case basis to determine whether there are reasonable alternatives that preclude the need for a narrative standard. If the department determines that the numeric standard for turbidity adopted under 75-5-301 cannot be achieved during the term of the activity and that there are no reasonable alternatives to achieve the numeric standard, the department may authorize the use of a narrative standard for a specified term.

(3) Each authorization issued by the department must include conditions that minimize, to the extent practicable, the magnitude of any change in water quality and the length of time during which any change may occur. The authorization must also include site-specific conditions that ensure that the activity is not harmful, detrimental, or injurious to public health and the uses of state waters and that ensure that existing and designated beneficial uses of state water are protected and maintained upon completion of the activity. The department may not

authorize short-term narrative standards for activities requiring a discharge permit under rules adopted pursuant to 75-5-401. Authorizations issued under this section may include conditions that require water quality or quantity monitoring and reporting.

(4) In the performance of its responsibilities under this section, the department may negotiate operating agreements with other departments of state government that are intended to minimize duplication in review of activities eligible for authorizations under this section. The department of fish, wildlife, and parks may, in accordance with subsections (1), (2), and (3), authorize short-term water quality standards for total suspended sediment and turbidity for any stream construction project that it reviews under Title 75, chapter 7, part 1, or Title 87, chapter 5, part 5.

History: En. Sec. 5, Ch. 588, L. 1999; amd. Sec. 47, Ch. 324, L. 2021.

75-5-319. Repealed. Sec. 9, Ch. 342, L. 2021.

History: En. Sec. 1, Ch. 415, L. 2015.

75-5-320. Temporary water quality standards variances. (1) Except as provided in 75-5-222(2), the department may adopt rules providing criteria and procedures for the department to issue a temporary variance to water quality standards if:

(a) a variance will not result in a lowering of currently attained, ambient water quality;

(b) the department rules are consistent, as necessary, with federal rules that authorize states to adopt variances from standards, including but not limited to 40 CFR 131.14; and

(c) (i) a permittee cannot reasonably expect to meet a water quality standard during the permit term for which the variance is approved; and

(ii) a permit compliance schedule is not feasible to preclude the need for a variance during the permit term for which the variance is approved.

(2) In order to receive a temporary variance, a permittee shall evaluate facility operations and infrastructure to maximize pollutant reduction through an optimization study. The variance must require the implementation of optimization study actions as terms and conditions of the discharge permit.

(3) The department shall review a temporary variance issued pursuant to this section at least once every 5 years and may continue, modify, or terminate the temporary variance as a result of the review.

History: En. Sec. 1, Ch. 251, L. 2019; amd. Sec. 8, Ch. 342, L. 2021.

75-5-321. Repealed. Sec. 4, Ch. 338, L. 2025.

History: En. Sec. 1, Ch. 342, L. 2021.

75-5-322. Directions to department — nutrient standards. The department shall:

(1) repeal department circular DEQ-12A Montana base numeric nutrient standards as adopted into administrative rule on August 8, 2014; and

(2) amend all guidance, assessment methods, total maximum daily load calculations, and other policies and procedures to eliminate reference to or reliance on department circular DEQ-12A.

History: En. Sec. 2, Ch. 338, L. 2025.

Compiler's Comments

Effective Date: Section 7, Ch. 338, L. 2025, provided: "[This act] is effective on passage and approval." Approved May 1, 2025.

75-5-323 and 75-5-324 reserved.

75-5-325. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Gray water" means wastewater that is collected separately from a sewage flow and that does not contain industrial chemicals, hazardous wastes, or wastewater from toilets.

(2) "Gray water reuse system" means a plumbing system that collects gray water.

History: En. Sec. 1, Ch. 312, L. 2007; amd. Sec. 3, Ch. 73, L. 2009.

75-5-326. Gray water reuse — restrictions. (1) Gray water may not be used to irrigate plants to be consumed by humans.

(2) Gray water reuse systems may not be located within a flood plain, as defined in 76-5-103.

History: En. Sec. 2, Ch. 312, L. 2007.

75-5-327. Local gray water regulations. The requirements of 75-5-305 and 75-5-326 are minimum requirements and do not restrict a local governing body from adopting stricter or additional regulations for gray water reuse systems.

History: En. Sec. 4, Ch. 312, L. 2007.

Part 4
Permits

75-5-401. *(Temporary)* **Rules for permits — ground water exclusions.** (1) Except as provided in subsection (5), the department shall adopt rules:

(a) governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters, including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems;

(b) governing the issuance, denial, modification, or revocation of permits. The department may not require a permit for a water conveyance structure or for a natural spring if the water discharged to state waters does not contain industrial waste, sewage, or other wastes. Discharge to surface water of ground water that is not altered from its ambient quality does not constitute a discharge requiring a permit under this part if:

(i) the discharge does not contain industrial waste, sewage, or other wastes;

(ii) the water discharged does not cause the receiving waters to exceed applicable standards for any parameters; and

(iii) to the extent that the receiving waters in their ambient state exceed standards for any parameters, the discharge does not increase the concentration of the parameters.

(c) governing authorization to discharge under a general permit for storm water associated with construction activity. These rules must allow an owner or operator to notify the department of the intent to be covered under the general permit. This notice of intent must include a signed pollution prevention plan that requires the applicant to implement best management practices in accordance with the general permit. The rules must authorize the owner or operator to discharge under the general permit on receipt of the notice and plan by the department.

(2) The rules must allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that the rules may allow the issuance of a temporary permit under which pollution may result if the department ensures that the permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.

(3) The rules must provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible.

(4) The department may adopt rules governing reclamation of sites disturbed by construction, modification, or operation of permitted activities for which a bond is voluntarily filed by a permittee pursuant to 75-5-405, including rules for the establishment of criteria and procedures governing release of the bond or other surety and release of portions of a bond or other surety.

(5) Discharges of sewage, industrial wastes, or other wastes into state ground waters from the following activities or operations are not subject to the ground water permit requirements adopted under subsections (1) through (4):

(a) discharges or activities at wells injecting fluids associated with oil and gas exploration and production regulated under the federal underground injection control program;

(b) disposal by solid waste management systems licensed pursuant to 75-10-221;

(c) individuals disposing of their own normal household wastes on their own property;

(d) hazardous waste management facilities permitted pursuant to 75-10-406;

(e) water injection wells, reserve pits, and produced water pits used in oil and gas field operations and approved pursuant to Title 82, chapter 11;

(f) agricultural irrigation facilities;

(g) storm water disposal or storm water detention facilities;

(h) subsurface disposal systems for sanitary wastes serving individual residences;

(i) in situ mining of uranium facilities controlled under Title 82, chapter 4, part 2;

(j) mining operations subject to operating permits or exploration licenses in compliance with The Strip and Underground Mine Reclamation Act, Title 82, chapter 4, part 2, or the metal mine reclamation laws, Title 82, chapter 4, part 3; or

(k) projects reviewed under the provisions of the Montana Major Facility Siting Act, Title 75, chapter 20.

(6) Notwithstanding the provisions of 75-5-301(4), mixing zones for activities excluded from permit requirements under subsection (5) of this section must be established by the permitting agency for those activities in accordance with 75-5-301(4)(a) through (4)(c).

(7) Notwithstanding the exclusions set forth in subsection (5), any excluded source that the department determines may be causing or is likely to cause violations of ground water quality standards may be required to submit monitoring information pursuant to 75-5-602.

(8) The department may adopt rules identifying other activities or operations from which a discharge of sewage, industrial wastes, or other wastes into state ground waters is not subject to the ground water permit requirements adopted under subsections (1) through (4).

(9) The department may adopt rules authorizing general permits for categories of point source discharges. The rules may authorize discharge upon issuance of an individual authorization by the department or upon receipt of a notice of intent to be covered under the general permit.

75-5-401. *(Effective on occurrence of contingency)* **Rules for permits — ground water exclusions.** (1) Except as provided in subsection (5), the department shall adopt rules:

(a) governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters, including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems;

(b) governing the issuance, denial, modification, or revocation of permits. The department may not require a permit for a water conveyance structure or for a natural spring if the water discharged to state waters does not contain industrial waste, sewage, or other wastes. Discharge to surface water of ground water that is not altered from its ambient quality does not constitute a discharge requiring a permit under this part if:

(i) the discharge does not contain industrial waste, sewage, or other wastes;

(ii) the water discharged does not cause the receiving waters to exceed applicable standards for any parameters; and

(iii) to the extent that the receiving waters in their ambient state exceed standards for any parameters, the discharge does not increase the concentration of the parameters.

(c) governing authorization to discharge under a general permit for storm water associated with construction activity. These rules must allow an owner or operator to notify the department of the intent to be covered under the general permit. This notice of intent must include a signed pollution prevention plan that requires the applicant to implement best management practices in accordance with the general permit. The rules must authorize the owner or operator to discharge under the general permit on receipt of the notice and plan by the department.

(2) The rules must allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that the rules may allow the issuance of a temporary permit under which pollution may result if the department ensures that the permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.

(3) The rules must provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible.

(4) The department may adopt rules governing reclamation of sites disturbed by construction, modification, or operation of permitted activities for which a bond is voluntarily filed by a permittee pursuant to 75-5-405, including rules for the establishment of criteria and procedures governing release of the bond or other surety and release of portions of a bond or other surety.

(5) Discharges of sewage, industrial wastes, or other wastes into state ground waters from the following activities or operations are not subject to the ground water permit requirements adopted under subsections (1) through (4):

(a) discharges or activities at wells injecting fluids associated with oil and gas exploration and production regulated under the federal underground injection control program;

(b) disposal by solid waste management systems licensed pursuant to 75-10-221;

(c) individuals disposing of their own normal household wastes on their own property;

(d) hazardous waste management facilities permitted pursuant to 75-10-406;

(e) water injection wells, reserve pits, and produced water pits used in oil and gas field operations and approved pursuant to Title 82, chapter 11;

(f) agricultural irrigation facilities;

(g) storm water disposal or storm water detention facilities;

(h) subsurface disposal systems for sanitary wastes serving individual residences;

(i) in situ mining of uranium facilities controlled under Title 82, chapter 4, part 2;

(j) mining operations subject to operating permits or exploration licenses in compliance with The Strip and Underground Mine Reclamation Act, Title 82, chapter 4, part 2, or the metal mine reclamation laws, Title 82, chapter 4, part 3;

(k) projects reviewed under the provisions of the Montana Major Facility Siting Act, Title 75, chapter 20; or

(l) a carbon dioxide injection well for which a permit has been issued pursuant to Title 82, chapter 11, part 1.

(6) Notwithstanding the provisions of 75-5-301(4), mixing zones for activities excluded from permit requirements under subsection (5) of this section must be established by the permitting agency for those activities in accordance with 75-5-301(4)(a) through (4)(c).

(7) Notwithstanding the exclusions set forth in subsection (5), any excluded source that the department determines may be causing or is likely to cause violations of ground water quality standards may be required to submit monitoring information pursuant to 75-5-602.

(8) The department may adopt rules identifying other activities or operations from which a discharge of sewage, industrial wastes, or other wastes into state ground waters is not subject to the ground water permit requirements adopted under subsections (1) through (4).

(9) The department may adopt rules authorizing general permits for categories of point source discharges. The rules may authorize discharge upon issuance of an individual authorization by the department or upon receipt of a notice of intent to be covered under the general permit.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(1)(d), (1)(e); amd. Sec. 1, Ch. 412, L. 1991; amd. Sec. 2, Ch. 297, L. 1995; amd. Sec. 9, Ch. 497, L. 1995; amd. Sec. 1, Ch. 582, L. 1995; amd. Sec. 6, Ch. 588, L. 1999; amd. Sec. 1, Ch. 413, L. 2001; amd. Sec. 6, Ch. 231, L. 2003; amd. Sec. 9, Ch. 474, L. 2009; amd. Sec. 48, Ch. 324, L. 2021.

Compiler's Comments

Contingent Effective Date: Section 31(1), Ch. 474, L. 2009, provided that this section is effective on the date that the board of oil and gas conservation is granted primacy to administer activities at carbon dioxide sequestration wells by the United States environmental protection agency.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

Department and Board permits required for facility siting, 75-20-211.

Dairy products manufacturing plant — approval of air pollutant control by Department of Environmental Quality, 81-22-403.

Mining permit denied if water pollution not prevented, 82-4-227.

Mining reclamation plan to include water pollution control, 82-4-231.

75-5-402. Duties of department. The department shall:

(1) issue, suspend, revoke, modify, or deny permits to discharge sewage, industrial wastes, or other wastes into state waters, consistently with rules made by the department;

(2) examine plans and other information needed to determine whether a permit should be issued or suggest changes in plans as a condition to the issuance of a permit;

(3) clearly specify in any permit any limitations imposed as to the volume, strength, and other significant characteristics of the waste to be discharged; and

(4) establish as conditions to the issuance of permits for which a performance bond or other surety is filed under 75-5-405 certain reclamation requirements sufficient to prevent pollution of state waters during and after operation of the project or activity for which a permit is issued.

History: En. Sec. 7, Ch. 21, L. 1971; amd. Sec. 3, Ch. 506, L. 1973; amd. Sec. 63, Ch. 349, L. 1974; amd. Sec. 6, Ch. 455, L. 1975; amd. Sec. 4, Ch. 444, L. 1977; R.C.M. 1947, 69-4809.1(1)(a) thru (1)(c); amd. Sec. 2, Ch. 412, L. 1991; amd. Sec. 49, Ch. 324, L. 2021.

75-5-403. Denial, issuance, or modification of permit — time for review of permit application and hearing. (1) The department shall review for completeness all applications for new permits within 60 days of the receipt of the initial application and within 30 days of receipt of responses to notices of deficiencies. The initial completeness notice must note all major deficiency issues, based on the information submitted. The department and the applicant may extend these timeframes, by mutual agreement, by not more than 75 days. An application is considered complete unless the applicant is notified of a deficiency within the appropriate review period.

(2) (a) If the department denies an application for a permit, issues a permit, or modifies a permit, the department shall give written notice of its action to the applicant or holder. Within 30 days of the department's decision, the applicant or holder may request a hearing before the board for the purpose of petitioning the board to reverse or modify the action of the department. The contested case provisions of the Montana Administrative Procedure Act pursuant to Title 2, chapter 4, apply to hearings under this section.

(b) Unless the deadline is waived by the applicant or holder and except as provided in subsection (2)(c), the hearing must be held within 90 days after receipt of written request. Except as provided in subsection (2)(c), within 120 days of the hearing, the board shall affirm, modify, or reverse the action of the department. If the holder does not request a hearing before the board, modification of a permit is effective 30 days after receipt of notice by the holder unless the department specifies a later date. If the holder does request a hearing before the board, an order modifying the permit is not effective until 20 days after receipt of notice of the action of the board.

(c) The board may extend a deadline for good cause.

(d) An applicant or holder may appeal the board's final decision to a district court.

(3) (a) Subject to subsection (3)(b) and within 30 days of the agency's final decision, a person who provided public comment on the permit may file an appeal in a district court.

(b) The appeal is limited to the issues raised by the person during the public comment period or the terms, conditions, and issues within the final permit decision that were not contained in the draft permit.

(c) This section provides the exclusive means for an appeal of a permit decision under this chapter.

(4) (a) Filing an appeal in a district court does not stay the permit.

(b) Subsection (4)(a) does not supersede department rules allowing permit provisions contested by the applicants or holders to be stayed, pending final action by the board.

History: En. Sec. 14, Ch. 21, L. 1971; amd. Sec. 4, Ch. 455, L. 1975; R.C.M. 1947, 69-4807.1(1); amd. Sec. 10, Ch. 497, L. 1995; amd. Sec. 1, Ch. 512, L. 2023.

75-5-404. Suspension or revocation of permit — procedure. If the department suspends or revokes a permit because it has reason to believe that the holder has violated this chapter, the department may specify that the suspension or revocation is effective immediately if the department finds that the violation is likely to continue and will cause pollution, the harmful effects of which will not be remedied immediately on the cessation of the violation. Upon petition by the holder of the permit, the board shall grant the holder a hearing, to be conducted in the manner specified in 75-5-611, and shall issue an order affirming, modifying, or reversing the action of the department. The order of the board shall be effective immediately unless the board directs otherwise.

History: En. Sec. 14, Ch. 21, L. 1971; amd. Sec. 4, Ch. 455, L. 1975; R.C.M. 1947, 69-4807.1(2).

75-5-405. Voluntary filing of performance bond — terms — hearing. (1) A person who holds or has applied for a permit pursuant to 75-5-401 may voluntarily file a performance bond or other surety with the department for an amount sufficient to enable the state to reclaim

the land disturbed by the project or activity authorized by the permit in accordance with all permit requirements and as needed to prevent pollution of state waters.

(2) If the department determines that the bonding level does not represent the present cost of reclaiming the disturbed land according to the reclamation requirements specified in the permit and the present cost of preventing pollution of state waters, the department shall notify the permittee and the permittee may modify the amount of the bond to accurately reflect the present cost.

(3) The department may not release all or any portion of a performance bond or other surety filed pursuant to this section until reclamation of the disturbed land has been completed to the satisfaction of the department and the department has determined that pollution of state waters has not occurred. The department may initiate bond forfeiture proceedings if the permittee fails to satisfactorily reclaim the disturbed land or prevent pollution of state waters.

(4) The department may not release a bond or other surety filed pursuant to this section until the public has been provided an opportunity for a hearing.

History: En. Sec. 3, Ch. 412, L. 1991.

75-5-406 through 75-5-409 reserved.

75-5-410. Water quality requirements — aquifer recharge or certain mitigation plans — minimum requirements. (1) (a) Except as provided in subsection (1)(b), a person who proposes an aquifer recharge or mitigation plan pursuant to 85-2-362 shall apply for, if necessary, a current permit pursuant to this chapter.

(b) The requirements of this section do not apply to the portion of a mitigation plan that consists of a change in appropriation rights for instream flow filed pursuant to 85-2-402.

(2) The minimum treatment requirements for sewage systems subject to this section are the federal requirements provided for in 40 CFR 133, and the system must meet, at a minimum, the requirements of level two treatment for the removal of nitrogen in the effluent.

(3) In addition to the minimum treatment requirements of subsection (2), sewage systems subject to this section that are used for aquifer injection must meet the more stringent of either primary drinking water standards pursuant to Title 75, chapter 6, or the nondegradation requirements pursuant to 75-5-303 at the point of discharge.

(4) In addition to the minimum treatment requirements of subsection (2), sewage systems subject to this section that are used for aquifer recharge must meet either primary drinking water standards pursuant to Title 75, chapter 6, or the nondegradation requirements pursuant to 75-5-303 at the point of discharge.

(5) For the purposes of this section, "aquifer injection" means the use of a well to inject water directly into an aquifer system without filtration through the geologic materials overlying the aquifer system for the purpose of aquifer recharge or for an aquifer storage and recovery project and "aquifer recharge" and "mitigation" have the meanings provided in 85-2-102.

History: En. Sec. 19, Ch. 391, L. 2007; amd. Sec. 1, Ch. 104, L. 2009.

75-5-411. Establishing setbacks — rulemaking. The department shall adopt rules establishing setback area requirements between sewage lagoons and water wells to prevent water well contamination.

History: En. Sec. 1, Ch. 327, L. 2017.

75-5-412. Nutrient loading offsets and trading credits. (1) Under a permit issued pursuant to 75-5-401, a point source discharger to state surface waters may receive nutrient loading offsets or trading credits to satisfy permitting requirements, including nutrient effluent limitations established pursuant to this part and nutrient effluent limitations derived from waste load allocations established pursuant to 75-5-703.

(2) Nutrient loading offsets and trading credits may be authorized for increases in or continuation of nutrient discharges when a net decrease in nutrient loading within the United States geological survey-designated 12-digit hydrologic unit code subbasin, or immediately adjacent 12-digit hydrologic unit code subbasin when the project is in close proximity to the adjacent 12-digit hydrologic unit code subbasin, is achieved through reductions from other point sources or nonpoint sources within the subbasin, either up gradient or down gradient of the applicant. The applicant shall quantify and verify reductions from projects based on the

methodologies developed by the department pursuant to subsection (4) or based on sufficient and credible site-specific data and methodologies that are reviewed and accepted by the department.

(3) For reductions that satisfy subsections (2) and (4), the offset or trading credit must be measured as:

(a) 100% of a reduction from point source discharges;

(b) 80% of a reduction from an up-gradient, nonpoint source discharge; or

(c) 50% of a reduction from a down-gradient, nonpoint source discharge.

(4) (a) The department shall establish acceptable methodologies, based on readily available watershed characteristics, to determine the reduction in nutrient loading for nonpoint sources, including for:

(i) riparian fencing programs based on the number of feet of streambank;

(ii) riparian vegetation programs based on the number of acres vegetated;

(iii) development of wetlands in areas of irrigation water return flows based on the number of acres associated with the return flows; or

(iv) removal of septic systems based on the number and size of septic systems removed.

(b) Other projects and methods may be proposed by an applicant or permittee that are supported by science and data modeling and are not contrary to existing data.

(c) The department shall use the methodologies established pursuant to this subsection (4) unless there is clear and convincing evidence that the nutrient loading of the proposed action would be substantially different from that determined by the established methodologies.

History: En. Sec. 1, Ch. 520, L. 2025.

Compiler's Comments

Effective Date: Section 5, Ch. 520, L. 2025, provided: "[This act] is effective on passage and approval." Approved May 8, 2025.

Direction to Department of Environmental Quality: Section 2, Ch. 520, L. 2025, provided: "To implement the provisions of [section 1] [75-5-412], the department shall amend:

(1) department circular DEQ-13, Montana's policy for nutrient trading, as adopted in December 2012; and

(2) ARM 17.30.1701."

Part 5
Financial Provisions

75-5-501. Repealed. Sec. 8, Ch. 195, L. 1999.

History: En. Sec. 1, Ch. 165, L. 1969; amd. Sec. 61, Ch. 349, L. 1974; R.C.M. 1947, 69-4808.1.

75-5-502. Department authorized to accept loans and grants. The department may accept loans and grants from the federal government and other sources to carry out the provisions of this chapter.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977; R.C.M. 1947, 69-4808.2(2)(a); amd. Sec. 50, Ch. 324, L. 2021.

75-5-503. Department authorized to accept loans and grants. The department may accept loans and grants from the federal government and other sources to carry out the provisions of this chapter.

History: En. Sec. 7, Ch. 21, L. 1971; amd. Sec. 3, Ch. 506, L. 1973; amd. Sec. 63, Ch. 349, L. 1974; amd. Sec. 6, Ch. 455, L. 1975; amd. Sec. 4, Ch. 444, L. 1977; R.C.M. 1947, 69-4809.1(2).

75-5-504 through 75-5-506 reserved.

75-5-507. Repealed. Sec. 82, Ch. 509, L. 1995.

History: En. Sec. 1, Ch. 600, L. 1991.

75-5-508 through 75-5-510 reserved.

75-5-511. Sewage system operators authorized to adopt charges and rates for users. (1) A municipality or other entity operating a sewage system may adopt a system of charges and rates to assure that each recipient of treatment works services within the municipality's jurisdiction or service area will pay its proportionate share of the costs of operation, maintenance, and replacement of any treatment works facilities or services provided by the municipality or other entity.

(2) A municipality or other entity operating a sewage system may require industrial users of its treatment works to pay to the municipality or other entity that portion of the cost of construction of the treatment works which is allocable to the treatment of such industrial user's

wastes. The department may determine whether the payment required of the industrial user for the portion of the cost of the construction of the treatment works is properly allocable to the treatment of the industrial user's wastes.

History: En. Sec. 14, Ch. 455, L. 1975; R.C.M. 1947, 69-4808.4(1), (2).

75-5-512. Uses allowed for revenues. A municipality or other entity operating a sewage system may retain the amounts of the revenues derived from the payment of costs by industrial users of its treatment works services and expend such revenues, together with interest thereon, for:

(1) repayment to applicable agencies of government of any grants or loans made to the municipality or other entity operating a sewage system for construction of the treatment works;

(2) future expansion and reconstruction of the treatment works; and

(3) other municipal purposes.

History: En. Sec. 14, Ch. 455, L. 1975; R.C.M. 1947, 69-4808.4(3).

75-5-513. Sewage system operators to keep records — department's power to inspect and audit. A municipality or other entity operating sewage systems shall keep records, financial statements, and books regarding its rates and charges and amounts collected on account of its treatment works and how such revenues are allocated. The department may inspect such records, financial statements, and books, audit them or cause them to be audited at such intervals as deemed necessary.

History: En. Sec. 14, Ch. 455, L. 1975; R.C.M. 1947, 69-4808.4(4).

75-5-514. When department to establish rates and collect charges. (1) In the event a municipality or other entity operating sewage systems fails, neglects, or refuses when required by the department to adopt the system of charges and rates authorized by 75-5-511, the department may adopt a system of charges and rates as provided for in 75-5-511(1) and collect, administer, and apply such revenues for the purposes of 75-5-512.

(2) In lieu of proceeding in the manner set forth in subsection (1) of this section, the department may institute proceedings at law or in equity to enforce compliance with or restrain violations of 75-5-511 through 75-5-513.

History: En. Sec. 14, Ch. 455, L. 1975; R.C.M. 1947, 69-4808.4(5), (6); amd. Sec. 51, Ch. 324, L. 2021.

75-5-515. Determination of costs payable by users. In determining the amount of treatment works costs to be paid by recipients of treatment works services, the municipality or other entity operating sewage systems or, if applicable, the department shall consider the strength, volume, types, and delivery flow rate characteristics of the waste; the nature, location, and type of treatment works; the receiving waters; and other factors deemed necessary.

History: En. 69-4808.5 by Sec. 15, Ch. 455, L. 1975; R.C.M. 1947, 69-4808.5; amd. Sec. 52, Ch. 324, L. 2021.

75-5-516. Fees authorized for recovery — process — rulemaking. (1) Except as provided in subsections (12) and (13), the department shall by rule prescribe fees sufficient to cover the department's documented costs, both direct and indirect, of:

(a) reviewing and acting upon an application for a permit, permit modification, permit renewal, certificate, license, or other authorization required by rule under 75-5-201 or 75-5-401;

(b) reviewing and acting upon a petition for a feasibility allowance under 75-5-303;

(c) reviewing and acting upon an application for a permit, certificate, license, or other authorization for which an exclusion is provided by rule from the permitting requirements established under 75-5-401;

(d) enforcing the terms and conditions of a permit or authorization identified in subsections (1)(a) through (1)(c). If the permit or authorization is not issued, the department shall return this portion of any application fee to the applicant.

(e) conducting compliance inspections and monitoring effluent and ambient water quality; and

(f) preparing water quality rules or guidance documents.

(2) Except as provided in subsection (12), the rules promulgated under this section must include:

(a) a fee on all applications for permits or authorizations, as identified in subsections (1)(a) through (1)(c), that recovers to the extent permitted by this subsection (2) the department's

cost of reviewing and acting upon the applications. This fee may not be more than $5,000 per discharge point for an application addressed under subsection (1), except that an application with multiple discharge points may be assessed a lower fee for those points according to rule.

(b) an annual fee to be assessed according to the volume and concentration of waste discharged into state waters. The annual fee may not be more than $3,000 per million gallons discharged per day on an annual average for any activity under permit or authorization, as described in subsection (1), except that:

(i) a permit or authorization with multiple discharge points may be assessed a lower fee for those points according to rule; and

(ii) a facility that consistently discharges effluent at less than or equal to one-half of its effluent limitations and that is in compliance with other permit requirements, using the previous calendar year's discharge data, is entitled to a 25% reduction in its annual permit fee. Proportionate reductions of up to 25% of the permit fee may be given to facilities that consistently discharge effluent at levels between 50% and 100% of their effluent limitations. However, a new permittee is not eligible for a fee reduction in its first year of operation, and a permittee with a violation of any effluent limit during the previous calendar year is not eligible for a fee reduction for the following year.

(3) To the extent permitted under subsection (2)(b), the annual fee must be sufficient to pay the department's estimated cost of conducting all tasks described under subsection (1) after subtracting:

(a) the fees collected under subsection (2)(a);

(b) state general fund appropriations for functions administered under this chapter; and

(c) federal grants for functions administered under this chapter.

(4) For purposes of subsection (3), the department's estimated cost of conducting the tasks described under subsection (1) is the amount authorized by the legislature for the department's water quality discharge permit programs.

(5) If the applicant or holder fails to pay a fee assessed under this section or rules adopted under this section within 90 days after the date established by rule for fee payment, the department may:

(a) impose an additional assessment consisting of not more than 20% of the fee plus interest on the required fee computed as provided in 15-1-216; or

(b) suspend the permit or exclusion. The department may lift the suspension at any time up to 1 year after the suspension occurs if the holder has paid all outstanding fees, including all penalties, assessments, and interest imposed under subsection (5)(a).

(6) Fees collected pursuant to this section must be deposited in an account in the special revenue fund type pursuant to 75-5-517.

(7) The department shall give written notice to each person assessed a fee under this section of the amount of fee that is assessed and the basis for the department's calculation of the fee. This notice must be issued at least 30 days prior to the due date for payment of the assessment.

(8) A holder of or an applicant for a permit, certificate, or license may appeal the department's fee assessment to the board within 20 days after receiving written notice of the fee determination under subsection (7). The appeal must include a written statement detailing the reasons that the permitholder or applicant considers the department's fee assessment to be erroneous or excessive.

(9) If part of the department's fee assessment is not in dispute in an appeal filed under subsection (8), the undisputed portion of the fee must be paid to the department upon written request of the department.

(10) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing before the board under this section.

(11) A municipality may raise rates to cover costs associated with the fees prescribed in this section for a public sewer system without the hearing required in 69-7-111.

(12) (a) The application fee assessed pursuant to this section for a suction dredge, as described in 82-4-310(2), may not be more than:

(i) $25 if it is owned and operated by a resident of this state; or

(ii) $100 if it is owned and operated by a nonresident of this state.

(b) The annual fee assessed pursuant to this section for a suction dredge, as described in 82-4-310(2), may not be more than:

(i) $25 if it is owned and operated by a resident of this state; or

(ii) $100 if it is owned and operated by a nonresident of this state.

(13) A county, an incorporated city or town, or a conservation district formed pursuant to Title 76, chapter 15, is not subject to fees for authorizations pursuant to 75-5-318 or certifications related to section 401 of the federal Clean Water Act, 33 U.S.C. 1341.

History: En. Sec. 1, Ch. 507, L. 1993; amd. Sec. 3, Ch. 297, L. 1995; amd. Sec. 6, Ch. 51, L. 1997; amd. Sec. 54, Ch. 427, L. 1999; amd. Sec. 2, Ch. 468, L. 2003; amd. Sec. 1, Ch. 436, L. 2019; amd. Sec. 53, Ch. 324, L. 2021; amd. Sec. 5, Ch. 712, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 5, Ch. 712, L. 2025. Amendment effective May 13, 2025.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

75-5-517. Disposition of water quality permit fees. (1) All fees collected under 75-5-516 must be credited to an account in the state special revenue fund.

(2) Money in the account may be used only to pay the department's cost in implementing the functions described in 75-5-516(1).

History: En. Sec. 2, Ch. 507, L. 1993.

Part 6
Enforcement, Appeal, and Penalties

Part Cross-References

Action for damage to water supply caused by metal mining operation, 82-4-355.

75-5-601. Cleanup orders. (1) The department may issue an order to a person to clean up any material that the person or the person's employee, agent, or subcontractor has accidentally or purposely dumped, spilled, or otherwise deposited in or near state waters and that may pollute state waters.

(2) If a unit of state or local government, including but not limited to a local board of health, county commission, governing body of a municipality, or state agency, has granted a permit or license to a person to discharge waste or has otherwise authorized an activity that involves the placement of waste and the department has reason to believe that the waste is causing or is likely to cause pollution of state waters, the department may issue an order to the unit of state or local government to take measures to ensure that the wastes causing or likely to cause the pollution are cleaned up.

(3) The department may include in an order issued to a county commission pursuant to subsection (2) a request that the commission create a sewer district in the geographic area affected by the order for the purpose of establishing a public sewer system in accordance with the petition and election procedures provided by 7-13-2204 and 7-13-2208 through 7-13-2214.

History: En. Sec. 7, Ch. 21, L. 1971; amd. Sec. 3, Ch. 506, L. 1973; amd. Sec. 63, Ch. 349, L. 1974; amd. Sec. 6, Ch. 455, L. 1975; amd. Sec. 4, Ch. 444, L. 1977; R.C.M. 1947, 69-4809.1(1)(f); amd. Sec. 1, Ch. 292, L. 1991; amd. Sec. 4, Ch. 297, L. 1995.

75-5-602. Power to require monitoring. In order to carry out the objectives of this chapter and to effectively monitor the discharge of sewage, industrial wastes, and other wastes into state waters, the department may require the owner or operator of any point source, or the owner or operator of any facility that discharges into a municipal sewage system and to which pretreatment standards promulgated under this chapter apply, to:

(1) establish and maintain records;

(2) make reports;

(3) install, use, and maintain monitoring equipment or methods, including biological monitoring techniques;

(4) sample effluents using specified monitoring methods at designated locations and intervals;

(5) provide other information as may be reasonably required by the department.

History: En. 69-4809.2 by Sec. 4, Ch. 506, L. 1973; amd. Sec. 7, Ch. 455, L. 1975; R.C.M. 1947, 69-4809.2(1).

75-5-603. Power to inspect. The authorized representative of the department, upon presentation of the representative's credentials, may at reasonable times enter upon any public or private property to:

(1) investigate conditions relating to pollution of state waters or violations of permit conditions;

(2) have access to and copy any records required under this chapter;

(3) inspect any monitoring equipment or method required under 75-5-602(3); and

(4) sample any effluents that the owner or operator of the source is required to sample under 75-5-602(4).

History: En. 69-4809.2 by Sec. 4, Ch. 506, L. 1973; amd. Sec. 7, Ch. 455, L. 1975; R.C.M. 1947, 69-4809.2(2); amd. Sec. 2495, Ch. 56, L. 2009.

Cross-References

Searches and seizures — right of private individual to be secure, Art. II, sec. 11, Mont. Const.

75-5-604. Information obtained to relate to standards. Any records, reports, or information obtained under 75-5-602 and 75-5-603 shall, in the case of effluent data, be related to any applicable effluent limitations, toxic, pretreatment, or new source performance standards.

History: En. 69-4809.2 by Sec. 4, Ch. 506, L. 1973; amd. Sec. 7, Ch. 455, L. 1975; R.C.M. 1947, 69-4809.2(3).

75-5-605. Prohibited activity — exemption. (1) It is unlawful to:

(a) cause pollution, as defined in 75-5-103, of any state waters or to place or cause to be placed any wastes where they will cause pollution of any state waters. Any placement of materials that is authorized by a permit issued by any state or federal agency is not a placement of wastes within the prohibition of this subsection (1)(a) if the agency's permitting authority includes provisions for review of the placement of materials to ensure that it will not cause pollution of state waters.

(b) violate any provision set forth in a permit or stipulation, including but not limited to limitations and conditions contained in the permit;

(c) cause degradation of state waters without a feasibility allowance pursuant to 75-5-303;

(d) violate any order issued pursuant to this chapter; or

(e) violate any provision of this chapter.

(2) Except for the permit exclusions identified in 75-5-401(5), it is unlawful to carry on any of the following activities without a current permit from the department:

(a) construct, modify, or operate a disposal system that discharges into any state waters;

(b) construct or use any outlet for the discharge of sewage, industrial wastes, or other wastes into any state waters; or

(c) discharge sewage, industrial wastes, or other wastes into any state waters.

(3) Activities associated with routine or periodic maintenance, repair, replacement, or operation of irrigation water conveyance systems, including activities associated with any constructed channel, canal, ditch, pipeline, or portion of any constructed channel, canal, ditch, or pipeline, are not prohibited activities under this chapter if the activities do not result in exceeding water quality standards for any receiving water outside the irrigation water conveyance system. The diversion of water in accordance with an existing water right or permit pursuant to Title 85, chapter 2, is not a prohibited activity under this chapter.

History: En. Sec. 126, Ch. 197, L. 1967; amd. Sec. 5, Ch. 21, L. 1971; amd. Sec. 3, Ch. 455, L. 1975; amd. Sec. 2, Ch. 444, L. 1977; R.C.M. 1947, 69-4806; amd. Sec. 2, Ch. 337, L. 1993; amd. Sec. 4, Ch. 595, L. 1993; amd. Sec. 11, Ch. 497, L. 1995; amd. Sec. 2, Ch. 582, L. 1995; amd. Sec. 1, Ch. 460, L. 2003; amd. Sec. 3, Ch. 327, L. 2017; amd. Sec. 6, Ch. 712, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 6, Ch. 712, L. 2025. Amendment effective May 13, 2025.

Cross-References

Prevention of discharge of waste products from vessels, 23-2-521, 23-2-522.

Dead animals — unlawful disposition, 75-10-213.

Action for damage to water supply caused by metal mining operation, 82-4-355.

75-5-606 through 75-5-609 reserved.

75-5-610. Written undertaking. (1) Except as provided in subsection (2), if the person requesting a hearing under 75-5-611 is not the applicant or permittee of an energy development project, the district court shall require a written undertaking to be given by the party requesting

the hearing for the payment of costs and damages incurred by the applicant or permittee if the request for judicial review was for an improper purpose designed to harass, cause unnecessary delay, or improperly interfere with the issuance of the permit without a reasonable basis in law or fact.

(2) The district court may not require a written undertaking if the party requesting the hearing is an indigent person.

History: En. Sec. 7, Ch. 445, L. 2009.

75-5-611. Violation of chapter — administrative actions and penalties — notice and hearing. (1) When the department has reason to believe that a violation of this chapter, a rule adopted under this chapter, or a condition of a permit or authorization required by a rule adopted under this chapter has occurred, it may have a written notice letter served personally or by certified mail on the alleged violator or the violator's agent. The notice letter must state:

(a) the provision of statute, rule, permit, or approval alleged to be violated;

(b) the facts alleged to constitute the violation;

(c) the specific nature of corrective action that the department requires;

(d) as applicable, the amount of the administrative penalty that will be assessed by order under subsection (2) if the corrective action is not taken within the time provided under subsection (1)(e); and

(e) as applicable, the time within which the corrective action is to be taken or the administrative penalty will be assessed. For the purposes of this chapter, service by certified mail is complete on the date of receipt. Except as provided in subsection (2)(a)(ii), an administrative penalty may not be assessed until the provisions of subsection (1) have been complied with.

(2) (a) The department may issue an administrative notice and order in lieu of the notice letter provided under subsection (1) if the department's action:

(i) does not involve assessment of an administrative penalty; or

(ii) seeks an administrative penalty only for an activity that it believes and alleges has violated or is violating 75-5-605.

(b) A notice and order issued under this section must meet all of the requirements specified in subsection (1).

(3) In a notice and order given under subsection (1), the department may require the alleged violator to appear before the board for a public hearing and to answer the charges. The hearing must be held no sooner than 15 days after service of the notice and order, except that the board may set an earlier date for hearing if it is requested to do so by the alleged violator. The board may set a later date for hearing at the request of the alleged violator if the alleged violator shows good cause for delay.

(4) If the department does not require an alleged violator to appear before the board for a public hearing, the alleged violator may request the board to conduct the hearing. The request must be in writing and must be filed with the department no later than 30 days after service of a notice and order under subsection (2). If a request is filed, a hearing must be held within a reasonable time. If a hearing is not requested within 30 days after service upon the alleged violator, the opportunity for a contested case appeal to the board under Title 2, chapter 4, part 6, is waived.

(5) If a contested case hearing is held under this section, it must be public and must be held in the county in which the violation is alleged to have occurred.

(6) (a) After a hearing, the board shall make findings and conclusions that explain its decision.

(b) If the board determines that a violation has occurred, it shall also issue an appropriate order for the prevention, abatement, or control of pollution, the assessment of administrative penalties, or both.

(c) If the order requires abatement or control of pollution, the board shall state the date or dates by which a violation must cease and may prescribe timetables for necessary action in preventing, abating, or controlling the pollution.

(d) If the order requires payment of an administrative penalty, the board shall explain how it determined the amount of the administrative penalty.

(e) If the board determines that a violation has not occurred, it shall declare the department's notice void.

(7) The alleged violator may petition the board for a rehearing on the basis of new evidence, which petition the board may grant for good cause shown.

(8) Instead of issuing an order, the board may direct the department to initiate appropriate action for recovery of a penalty under 75-5-631, 75-5-632, 75-5-633, or 75-5-635.

(9) (a) Except as provided in subsection (9)(d), an action initiated under this section may include an administrative penalty of not more than $10,000 for each day of each violation; however, the maximum penalty may not exceed $100,000 for any related series of violations.

(b) Administrative penalties collected under this section must be deposited in the general fund.

(c) In determining the amount of penalty to be assessed to a person, the department and board shall consider the penalty factors in 75-1-1001, rules promulgated under 75-5-201, and subsection (9)(d).

(d) A person who commits a violation that adversely affects the department's administration of this chapter, a rule adopted pursuant to this chapter, or a condition of a permit or authorization issued under this chapter but does not harm or have the potential to harm human health, the environment, or the department's ability to protect human health or the environment may not be assessed a penalty of more than $500 for each day of the violation, not to exceed $5,000 for all days of the same violation.

(e) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing conducted under this section.

History: En. Sec. 13, Ch. 21, L. 1971; amd. Sec. 65, Ch. 349, L. 1974; amd. Sec. 8, Ch. 455, L. 1975; R.C.M. 1947, 69-4820; amd. Sec. 2, Ch. 504, L. 1993; amd. Sec. 9, Ch. 487, L. 2005; amd. Sec. 1, Ch. 443, L. 2015; amd. Sec. 30, Ch. 535, L. 2021.

Cross-References

Montana Administrative Procedure Act — contested case hearings, Title 2, ch. 4, part 6.

75-5-612. Additional sanctions authorized. In addition to all other remedies created by this chapter, the department is authorized to take appropriate enforcement action on its own initiative to prevent, abate, and control:

(1) the pollution of state waters;

(2) any violation of a condition or limitation imposed by a permit issued under 75-5-402(1); or

(3) any violation of rules relating to pretreatment standards.

History: En. 69-4820.1 by Sec. 5, Ch. 506, L. 1973; amd. Sec. 9, Ch. 455, L. 1975; amd. Sec. 10, Ch. 140, L. 1977; amd. Sec. 4, Ch. 308, L. 1977; amd. Sec. 5, Ch. 444, L. 1977; R.C.M. 1947, 69-4820.1(1).

75-5-613. Compliance orders. In furtherance of 75-5-612, a person violating a condition, limitation, standard, or other requirement established pursuant to this chapter may be served with a compliance order issued by the department. The order must specify the condition, limitation, standard, or other requirement violated and must set a time for compliance. However, in establishing a time for compliance, the department shall take into account the seriousness of the violation and any good faith efforts that have been made to comply with the condition, limitation, standard, or other requirement that has been violated. The compliance order issued under this section shall be served either personally by a person qualified to perform service under the Montana Rules of Civil Procedure or by certified mail.

History: En. 69-4820.1 by Sec. 5, Ch. 506, L. 1973; amd. Sec. 9, Ch. 455, L. 1975; amd. Sec. 10, Ch. 140, L. 1977; amd. Sec. 4, Ch. 308, L. 1977; amd. Sec. 5, Ch. 444, L. 1977; R.C.M. 1947, 69-4820.1(2).

75-5-614. Injunctions authorized. (1) Except as provided in 81-9-240, the department is authorized to commence a civil action seeking appropriate relief, including a permanent or temporary injunction, for a violation that would be subject to a compliance order under 75-5-613. An action under this subsection may be commenced in the district court of the county where a violation occurs or is threatened, and the court has jurisdiction to restrain the violation and to require compliance.

(2) Except as provided in 81-9-240, the department may bring an action for an injunction against the continuation of an alleged violation of the terms or conditions of a permit issued by the department or any rule or effluent standard promulgated under this chapter or against a person who fails to comply with an emergency order issued by the department under 75-5-621 or a final order of the board. The court to which the department applies for an injunction may issue

a temporary injunction if it finds that there is reasonable cause to believe that the allegations of the department are true, and it may issue a temporary restraining order pending action on the temporary injunction.

History: (1)En. 69-4820.1 by Sec. 5, Ch. 506, L. 1973; amd. Sec. 9, Ch. 455, L. 1975; amd. Sec. 10, Ch. 140, L. 1977; amd. Sec. 4, Ch. 308, L. 1977; amd. Sec. 5, Ch. 444, L. 1977; Sec. 69-4820.1, R.C.M. 1947; (2)En. Sec. 19, Ch. 21, L. 1971; amd. Sec. 68, Ch. 349, L. 1974; amd. Sec. 12, Ch. 455, L. 1975; Sec. 69-4825, R.C.M. 1947; R.C.M. 1947, 69-4820.1(3), 69-4825; amd. Sec. 12, Ch. 497, L. 1995; amd. Sec. 5, Ch. 416, L. 2009.

Cross-References

Injunctions — jurisdiction of Supreme Court, 3-2-205.

Injunctions, Title 27, ch. 19.

75-5-615. Violators subject to penalties. (1) A person found to be in violation of a condition, limitation, standard, or other requirement established pursuant to 75-5-612 through 75-5-614 is subject to the penalty provisions of 75-5-631, 75-5-632, 75-5-633, and 75-5-635.

(2) For the purpose of this section, the term "person" means, in addition to the definition contained in 75-5-103, any responsible corporate officer.

History: En. 69-4820.1 by Sec. 5, Ch. 506, L. 1973; amd. Sec. 9, Ch. 455, L. 1975; amd. Sec. 10, Ch. 140, L. 1977; amd. Sec. 4, Ch. 308, L. 1977; amd. Sec. 5, Ch. 444, L. 1977; R.C.M. 1947, 69-4820.1(4), (5); amd. Sec. 6, Ch. 68, L. 1979.

75-5-616. Enforcement of permits and chapter. The department shall take actions that are authorized under this part to ensure that the terms and conditions of issued permits are complied with and to ensure that violations of this chapter are appropriately prosecuted.

History: En. Sec. 7, Ch. 21, L. 1971; amd. Sec. 3, Ch. 506, L. 1973; amd. Sec. 63, Ch. 349, L. 1974; amd. Sec. 6, Ch. 455, L. 1975; amd. Sec. 4, Ch. 444, L. 1977; R.C.M. 1947, 69-4809.1(1)(g); amd. Sec. 6, Ch. 297, L. 1995.

75-5-617. Enforcement response. (1) Whenever, on the basis of information available to the department, the department finds that a person is in violation of this chapter, a rule adopted under this chapter, or a condition or limitation in a permit, authorization, or order issued under this chapter, the department shall initiate an enforcement response, which may include any of the following actions:

(a) issuance of a letter notifying the person of the violation and requiring compliance;

(b) issuance of an order requiring the person to correct the violation pursuant to 75-5-601, 75-5-611, 75-5-613, and 75-5-621;

(c) bringing a judicial action as authorized by 75-5-614 and 75-5-622; or

(d) seeking administrative or judicial penalties as provided under 75-5-611, 75-5-615, and 75-5-631 through 75-5-633.

(2) Unless an alleged violation represents an imminent threat to human health, safety, or welfare or to the environment, the department shall first issue a letter notifying the person of the violation and requiring compliance. If the person fails to respond to the conditions in the department's letter, then the department shall take further action as provided in subsection (1).

(3) The provisions of this chapter do not limit the authority of the department to bring a judicial action, which may include the assessment of penalties, prior to initiating any administrative action authorized by this chapter.

History: En. Sec. 5, Ch. 297, L. 1995.

75-5-618. Liability — defense and exclusions. (1) A person has a defense against liability in a tort action for damages suffered as a result of an act or omission that constitutes a violation of this chapter, a rule adopted under this chapter, or a condition of a permit or authorization required by a rule adopted under this chapter if the person can establish by a preponderance of the evidence that:

(a) the person is a government entity that acquired ownership or control through bankruptcy, tax delinquency, abandonment, or lien foreclosure in which the government entity acquired title by virtue of the government entity's authority;

(b) the person has not caused or contributed to the violation; and

(c) the person is making an effort to abate the violation.

(2) For the purposes of this part, "government entity" includes a consolidated city-county, a county, and an incorporated city or town.

History: En. Sec. 1, Ch. 159, L. 2013.

75-5-619 and 75-5-620 reserved.

75-5-621. Emergencies. (1) Notwithstanding other provisions of this chapter, if the department finds that a person is committing or is about to commit an act in violation of this chapter or an order or rule issued under this chapter that, if it occurs or continues, will cause substantial pollution the harmful effects of which will not be remedied immediately after the commission or cessation of the act, the department may order the person to stop, avoid, or moderate the act so that the substantial injury will not occur. The order is effective immediately upon receipt by the person to whom it is directed, unless the department provides otherwise.

(2) Notice of the order must conform to the requirements of 75-5-611(1) so far as practicable. The notice must indicate that the order is an emergency order.

(3) Upon issuing an order, the department shall fix a place and time for a hearing before the board, not later than 5 days after issuing the order unless the person to whom the order is directed requests a later time. The department may deny a request for a later time if it finds that the person to whom the order is directed is not complying with the order. The hearing must be conducted in the manner specified in 75-5-611. As soon as practicable after the hearing, the board shall affirm, modify, or set aside the order of the department. The order of the board must be accompanied by the information required in 75-5-611(6). An action for review of the order of the board may be initiated in the manner specified in 75-5-641. Except as provided in 81-9-240, the initiation of an action or taking of an appeal may not stay the effectiveness of the order unless the court finds that the board did not have reasonable cause to issue an order under this section.

History: En. Sec. 18, Ch. 21, L. 1971; amd. Sec. 11, Ch. 140, L. 1977; R.C.M. 1947, 69-4824; amd. Sec. 7, Ch. 297, L. 1995; amd. Sec. 266, Ch. 42, L. 1997; amd. Sec. 6, Ch. 416, L. 2009.

Cross-References

Energy emergency — power of Governor to suspend pollution control standards, 90-4-310.

75-5-622. Additional emergency powers. Notwithstanding any other provisions of this chapter, the department, upon receipt of evidence that a pollution source or combination of sources is endangering the health, welfare, or livelihood of a person, may bring suit in the district court of any county in which the defendant is located or resides or is doing business to enjoin the discharge of pollutants causing or contributing to the alleged pollution.

History: En. 69-4824.1 by Sec. 7, Ch. 506, L. 1973; R.C.M. 1947, 69-4824.1.

75-5-623 through 75-5-630 reserved.

75-5-631. Civil penalties — injunctions not barred — venue. (1) In an action initiated by the department to collect civil penalties against a person who is found to have violated this chapter or a rule, permit, effluent standard, or order issued under the provisions of this chapter, the person is subject to a civil penalty not to exceed $25,000. Each day of violation constitutes a separate violation.

(2) Action under this section does not bar enforcement of this chapter or of rules or orders issued under it by injunction or other appropriate remedy.

(3) The department shall institute and maintain enforcement proceedings in the name of the state. Penalties are recoverable in an action brought by the department. The action must be brought in the district court of the county in which the violation occurred.

(4) In determining the amount of penalties under this section, the district court shall take into account the penalty factors in 75-1-1001.

History: En. Sec. 17, Ch. 21, L. 1971; amd. Sec. 6, Ch. 506, L. 1973; amd. Sec. 67, Ch. 349, L. 1974; amd. Sec. 11, Ch. 455, L. 1975; R.C.M. 1947, 69-4823(1), (3); amd. Sec. 1, Ch. 644, L. 1991; amd. Sec. 8, Ch. 297, L. 1995; amd. Sec. 13, Ch. 497, L. 1995; amd. Sec. 10, Ch. 487, L. 2005; amd. Sec. 31, Ch. 535, L. 2021.

Cross-References

Injunctions, Title 27, ch. 19.

75-5-632. Criminal penalties. A person who willfully or negligently violates 75-5-605 or any pretreatment standard established pursuant to this chapter is guilty of an offense and, upon conviction, is subject to a fine not to exceed $25,000 per day of violation or imprisonment for not more than 1 year, or both. Following an initial conviction under this section, subsequent convictions subject a person to a fine of not more than $50,000 per day of violation or imprisonment for not more than 2 years, or both.

History: En. Sec. 17, Ch. 21, L. 1971; amd. Sec. 6, Ch. 506, L. 1973; amd. Sec. 67, Ch. 349, L. 1974; amd. Sec. 11, Ch. 455, L. 1975; R.C.M. 1947, 69-4823(2); amd. Sec. 9, Ch. 297, L. 1995.

Cross-References
Execution of criminal fine, 46-19-102.

75-5-633. Penalties for false statements and falsifying monitoring. Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter shall upon conviction be punished by a fine of not more than $25,000 or by imprisonment for not more than 6 months, or both.

History: En. Sec. 17, Ch. 21, L. 1971; amd. Sec. 6, Ch. 506, L. 1973; amd. Sec. 67, Ch. 349, L. 1974; amd. Sec. 11, Ch. 455, L. 1975; R.C.M. 1947, 69-4823(6); amd. Sec. 2, Ch. 644, L. 1991.

75-5-634. Disposition of fines and civil penalties. Fines and civil penalties collected under this chapter, except those collected in a justice's court, must be deposited into the state general fund.

History: En. Sec. 17, Ch. 21, L. 1971; amd. Sec. 6, Ch. 506, L. 1973; amd. Sec. 67, Ch. 349, L. 1974; amd. Sec. 11, Ch. 455, L. 1975; R.C.M. 1947, 69-4823(5); amd. Sec. 43, Ch. 557, L. 1987; amd. Sec. 3, Ch. 600, L. 1991; amd. Sec. 62, Ch. 509, L. 1995.

Cross-References
Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

75-5-635. Costs and expenses — recovery by department. (1) In a civil action initiated by the department under this chapter, the department may ask for and the court is authorized to assess a violator for the cost of the investigation or monitoring survey that led to the establishment of the violation and any expense incurred by the state in removing, correcting, or terminating any of the adverse effects upon water quality resulting from the unauthorized discharge of pollutants.

(2) Any costs and expenses recovered by the department under the provisions of subsection (1) must be deposited in the state general fund.

History: En. Sec. 17, Ch. 21, L. 1971; amd. Sec. 6, Ch. 506, L. 1973; amd. Sec. 67, Ch. 349, L. 1974; amd. Sec. 11, Ch. 455, L. 1975; R.C.M. 1947, 69-4823(7); amd. Sec. 4, Ch. 600, L. 1991; amd. Sec. 63, Ch. 509, L. 1995.

75-5-636. Investigation of complaints by other parties. A person, association, corporation, or agency of the state or federal government may notify the department of an alleged violation of this chapter. Based upon information submitted by the person, association, corporation, or agency, the department shall conduct an investigation to determine the validity of the complaint. If a violation is established by the department's investigation, the department shall initiate an appropriate enforcement response as described in 75-5-617. If the investigation proves the protest to have been without reasonable cause, the department may seek recovery of investigative costs from the person who made the notification.

History: En. Sec. 20, Ch. 21, L. 1971; amd. Sec. 69, Ch. 349, L. 1974; amd. Sec. 13, Ch. 455, L. 1975; R.C.M. 1947, 69-4826; amd. Sec. 10, Ch. 297, L. 1995; amd. Sec. 14, Ch. 497, L. 1995.

Cross-References
Mandamus, Title 27, ch. 26.

75-5-637 through 75-5-640 reserved.

75-5-641. Appeals from board orders — review by district court. (1) An appeal of an order of the board must be in the district court of the county in which the alleged source of pollution is located.

(2) A person interested in the order may intervene, in the manner provided by the rules of civil procedure, if the person shows good cause. An intervenor is a party for the purposes of this chapter.

(3) The attorney general shall represent the board if requested, or the department may appoint special counsel for the proceedings, subject to the approval of the attorney general.

(4) Except as provided in 81-9-240, the initiation of an action for review or the taking of an appeal does not stay the effectiveness of an order of the board unless the court finds that there is probable cause to believe:

(a) that refusal to grant a stay will cause serious harm to the affected party; and

(b) that a violation found by the board will not continue or, if it does continue, the harmful effects on state waters will be remedied immediately on the cessation of the violation.

(5) If a court does not stay the effectiveness of an order of the board, it may enforce compliance with that order by issuing a temporary restraining order or an injunction at the request of the board.

History: En. Sec. 15, Ch. 21, L. 1971; amd. Sec. 66, Ch. 349, L. 1974; R.C.M. 1947, 69-4821; amd. Sec. 2496, Ch. 56, L. 2009; amd. Sec. 7, Ch. 416, L. 2009.

Cross-References

Montana Administrative Procedure Act — judicial review, Title 2, ch. 4, part 7.
Injunctions, Title 27, ch. 19.

Part 7
Water Quality Assessment

75-5-701. Purpose. Consistent with the policy established in 75-5-101(2) to provide a comprehensive program for the prevention, abatement, and control of water pollution, the purpose of this part is to further direct the department to monitor state waters to accurately assess their quality and, when required, to develop total maximum daily loads for those water bodies identified as threatened or impaired.

History: En. Sec. 2, Ch. 541, L. 1997.

75-5-702. Monitoring — water quality assessment listing — costs payable by department — statewide advisory group. (1) The department shall monitor state waters to assess the quality of those waters and to identify surface water bodies or segments of surface water bodies that are threatened or impaired. The department shall use the monitoring results to revise the list of water bodies that are identified as threatened or impaired and to establish a priority ranking for TMDL development for those waters in accordance with subsections (4) and (7).

(2) In revising the list prepared pursuant to this section, the department shall use all currently available data, including information or data obtained from federal, state, and local agencies, private entities, or individuals with an interest in water quality protection. Except as provided in subsection (6), the department may modify the list only if there is sufficient credible data to support the modification. Prior to publishing a final list, the department shall provide public notice and allow 60 days for public comment on the draft list. The department shall make available for public review, upon request, documentation used in the determination to list or delist a particular water body, including, at a minimum, a description of the information, data, and methodology used. The department may charge a reasonable fee for the documentation, commensurate with the cost of providing the documentation to the requestor.

(3) A person may request that the department add or remove a water body or reprioritize a water body on a draft or published list by providing the data or information necessary to support the request. The department shall review the data within 180 days from its submittal. If the department determines that there is sufficient credible data to grant the request, the department shall provide public notice of its intended action and allow 60 days for public comment prior to taking action on the request. A person aggrieved by the department's decision to grant or deny the request may appeal the department's decision to the board.

(4) The department shall, in consultation with local conservation districts and watershed advisory groups pursuant to 75-5-704, review and revise the list and priority rankings of water bodies identified as threatened or impaired. The department shall review and revise the list at intervals not to exceed 5 years. The department shall make available for public review the data and information used in making any changes in its list of threatened or impaired water bodies that is developed and maintained pursuant to this section.

(5) By October 1, 1999, and in consultation with the statewide TMDL advisory group established pursuant to subsection (10), the department shall develop and maintain a data management system that can be used to assess the validity and reliability of the data used in the listing and priority ranking process. The department shall make available to the public, upon request, data from its data management system. The department may charge a reasonable fee for the data, commensurate with its cost of providing the data to the requestor.

(6) By October 1, 1999, and in consultation with the statewide TMDL advisory group, the department shall use the data management system developed and maintained pursuant to subsection (5) to revise the list and to remove any water body that lacks sufficient credible

data to support its listing. If the department removes a water body because there is a lack of sufficient credible data to support its listing, the department shall monitor and assess that water body during the next field season or as soon as possible thereafter to determine whether it is a threatened water body or an impaired water body.

(7) Except as provided in subsection (9), in prioritizing water bodies for TMDL development, the department shall, in consultation with the statewide TMDL advisory group, take into consideration the following:

(a) the beneficial uses established for a water body;

(b) the extent that natural factors over which humans have no control are contributing to any impairment;

(c) the impacts to human health and aquatic life;

(d) the degree of public interest and support;

(e) the character of the pollutant and the severity and magnitude of water quality standard noncompliance;

(f) whether the water body is an important high-quality resource in an early stage of degradation;

(g) the size of the water body not achieving standards;

(h) immediate programmatic needs, such as waste load allocations for new permits or permit renewals and load allocations for new nonpoint sources;

(i) court orders and decisions relating to water quality;

(j) state policies and priorities, including the protection and restoration of native fish when appropriate;

(k) the availability of technology and resources to correct the problems;

(l) whether actions or voluntary programs that are likely to correct the impairment of a particular water body are currently in place; and

(m) the recreational, economic, and aesthetic importance of a particular water body.

(8) Except as provided in subsection (9), the department shall, in consultation with the statewide TMDL advisory group, develop a method of rating water bodies according to the criteria and considerations described in subsection (7) in order to rank the listed water bodies as high priority, moderate priority, or low priority for TMDL development. The department may not rank a water body as a high priority under this section without first validating the data necessary to support the ranking.

(9) (a) When the department receives an application for a new individual permit to discharge into a surface water body or a segment of a surface water body pursuant to 75-5-401, the surface water body or segment of a surface water body has been listed pursuant to subsection (2) of this section, the discharge would contain a pollutant for which the water body or segment is threatened or impaired, and a TMDL has not been developed for that water body or segment, the department shall:

(i) within 30 days of the department's receipt of the application, initiate the development of a TMDL on the water body or segment; and

(ii) except as provided in subsection (9)(b), within 180 days of the department's receipt of the application, complete development of the TMDL pursuant to 75-5-703.

(b) If the department is not able to complete development of the TMDL in accordance with subsection (9)(a)(ii), the department shall, within 30 days of the department's receipt of the application, specify in writing to the applicant why the department is not able to complete development of a TMDL in accordance with subsection (9)(a)(ii). The department and the applicant shall make reasonable efforts to mutually agree in writing to a timeframe in which the department shall complete development of the TMDL. If the department specifies a lack of resources as a reason why the department cannot complete development of the TMDL in accordance with subsection (9)(a)(ii), the department shall clearly explain in its written specification what resources are not available, why those resources are not available, and when those resources will be available.

(c) If the department and the applicant cannot mutually agree to a timeframe in accordance with subsection (9)(b), the department shall, within 60 days of the department's receipt of the application, specify in writing to the applicant the timeframe in which the TMDL will be completed by the department and the reasons why that timeframe is appropriate. If

the department specifies a lack of resources as a reason why the department's timeframe is appropriate, the department may request the applicant provide funding for the development of the TMDL in order to accelerate the completion of the TMDL.

(d) The applicant may, within 15 days of the department's written specification provided in accordance with subsection (9)(c), request in writing a hearing before the board for the purpose of petitioning the board to reverse or modify the department's decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection. If the parties to the contested case waive a formal proceeding pursuant to 2-4-603, the informal proceeding must be conducted within 30 days after the board's receipt of the written request. After the hearing and in a reasonable time, the board shall affirm, modify, or reverse the action of the department, and the board shall make findings and conclusions that explain its decision. Pending the board's decision, the department shall develop the TMDL in accordance with the timeframe specified in subsection (9)(a)(ii).

(e) The department may not declare an application incomplete or deficient because a TMDL has not been prepared.

(f) If on April 27, 2015, an application for a new individual permit to discharge into a surface water body or a segment of a surface water body pursuant to 75-5-401 is pending, the surface water body or segment of a surface water body has been listed pursuant to subsection (2) of this section, the discharge would contain a pollutant for which the water body or segment is threatened or impaired, and a TMDL has not been developed for the water body or segment, the department shall, except as provided in subsection (9)(g), complete a TMDL for the water body or segment within 180 days of April 27, 2015.

(g) If the department is not able to complete development of the TMDL within 180 days of April 27, 2015, pursuant to subsection (9)(f), then the timeframes established in accordance with subsections (9)(b), (9)(c), and (9)(d) apply to the application, but the timeframes are measured from April 27, 2015, not from the date the department receives an application.

(10) (a) The department shall establish a statewide TMDL advisory group to serve in the consultation capacity set forth in 75-5-703, 75-5-704, and this section. Fourteen members, and any replacement members that may be necessary, must be appointed by the director, based upon one nomination from each of the following interests:

(i) livestock-oriented agriculture;
(ii) farming-oriented agriculture;
(iii) conservation or environmental interests;
(iv) water-based recreationists;
(v) the forestry industry;
(vi) municipalities;
(vii) point source dischargers;
(viii) mining;
(ix) federal land management agencies;
(x) state trust land management agencies;
(xi) supervisors of soil and water conservation districts for counties east of the continental divide;
(xii) supervisors of soil and water conservation districts for counties west of the continental divide;
(xiii) the hydroelectric industry; and
(xiv) fishing-related businesses.

(b) If the director receives more than one nomination from a particular interest, the director shall notify the respective nominators and request that they agree on one nominee.

(11) The department shall provide public notice of meetings of the statewide TMDL advisory group and shall solicit, document, and consider public comments provided during the deliberations of the advisory group.

History: En. Sec. 3, Ch. 541, L. 1997; amd. Sec. 1, Ch. 93, L. 1999; amd. Sec. 1, Ch. 319, L. 2015; amd. Sec. 1, Ch. 711, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 711, L. 2025. Amendment effective October 1, 2025.

75-5-703. Development and implementation of total maximum daily loads. (1) The department shall, in consultation with local conservation districts and watershed advisory groups, develop total maximum daily loads or TMDLs for threatened or impaired water bodies or segments of water bodies in order of the priority ranking established by the department under 75-5-702. Each TMDL must be established at a level that will achieve compliance with applicable water quality standards and must include a reasonable margin of safety that takes into account any lack of knowledge concerning the relationship between the TMDL and water quality standards. The department shall consider applicable guidance from the federal environmental protection agency, as well as the environmental, economic, and social costs and benefits of developing and implementing a TMDL.

(2) In establishing TMDLs under subsection (1), the department may establish waste load allocations for point sources and may establish load allocations for nonpoint sources, as set forth in subsection (8), and may allow for effluent trading. The department shall, in consultation with local conservation districts and watershed advisory groups, develop reasonable land, soil, and water conservation practices specifically recognizing established practices and programs for nonpoint sources.

(3) The department shall establish a schedule that provides a reasonable timeframe for TMDL development for impaired and threatened water bodies that are on the most recent list prepared pursuant to 75-5-702. The department shall report the progress in completing TMDLs and the current schedule for completion of TMDLs for the water bodies that remain on the list to the water policy interim committee in accordance with 5-11-210.

(4) The department shall provide guidance for TMDL development on any threatened or impaired water body, regardless of its priority ranking, if the necessary funding and resources from sources outside the department are available to develop the TMDL and to monitor the effectiveness of implementation efforts. The department shall review the TMDL and either approve or disapprove the TMDL. If the TMDL is approved by the department, the department shall ensure implementation of the TMDL according to the provisions of subsections (6) through (8).

(5) For water bodies listed under 75-5-702, the department shall provide assistance and support to landowners, local conservation districts, and watershed advisory groups for interim measures that may restore water quality and remove the need to establish a TMDL, such as informational programs regarding control of nonpoint source pollution and voluntary measures designed to correct impairments. When a source implements voluntary measures to reduce pollutants prior to development of a TMDL, those measures, whether or not reflected in subsequently issued waste discharge permits, must be recognized in development of the TMDL in a way that gives credit for the pollution reduction efforts.

(6) After development of a TMDL and upon approval of the TMDL, the department shall:

(a) incorporate the TMDL into its current continuing planning process;

(b) incorporate the waste load allocation developed for point sources during the TMDL process into appropriate water discharge permits; and

(c) assist and inform landowners regarding the application of a voluntary program of reasonable land, soil, and water conservation practices developed pursuant to subsection (2).

(7) Once the control measures identified in subsection (6) have been implemented, the department shall, in consultation with the statewide TMDL advisory group, develop a monitoring program to assess the waters that are subject to the TMDL to determine whether compliance with water quality standards has been attained for a particular water body or whether the water body is no longer threatened. The monitoring program must be designed based on the specific impairments or pollution sources. The department's monitoring program must include long-term monitoring efforts for the analysis of the effectiveness of the control measures developed.

(8) The department shall support a voluntary program of reasonable land, soil, and water conservation practices to achieve compliance with water quality standards for nonpoint source activities for water bodies that are subject to a TMDL developed and implemented pursuant to this section.

(9) If the monitoring program provided under subsection (7) demonstrates that the TMDL is not achieving compliance with applicable water quality standards within 5 years

after approval of a TMDL, the department shall conduct a formal evaluation of progress in restoring water quality and the status of reasonable land, soil, and water conservation practice implementation to determine if:

(a) the implementation of a new or improved phase of voluntary reasonable land, soil, and water conservation practice is necessary;

(b) water quality is improving but a specified time is needed for compliance with water quality standards; or

(c) revisions to the TMDL are necessary to achieve applicable water quality standards.

(10) Pending completion of a TMDL on a water body listed pursuant to 75-5-702:

(a) point source discharges to a listed water body may commence or continue, provided that:

(i) the discharge is in conformance with a discharge permit that reflects, in the manner and to the extent applicable for the particular discharge, the provisions of 75-5-303;

(ii) the discharge will not cause a decline in water quality for parameters by which the water body is impaired; and

(iii) minimum treatment requirements adopted pursuant to 75-5-305 are met;

(b) the issuance of a discharge permit may not be precluded because a TMDL is pending;

(c) new or expanded nonpoint source activities affecting a listed water body may commence and continue if those activities are conducted in accordance with reasonable land, soil, and water conservation practices; and

(d) for existing nonpoint source activities, the department shall continue to use educational nonpoint source control programs and voluntary measures as provided in subsections (5) and (6).

(11) This section may not be construed to prevent a person from filing an application or petition under 75-5-302, 75-5-310, or 75-5-312.

History: En. Sec. 4, Ch. 541, L. 1997; amd. Sec. 2, Ch. 93, L. 1999; amd. Sec. 1, Ch. 128, L. 2003; amd. Sec. 1, Ch. 302, L. 2011; amd. Sec. 6, Ch. 122, L. 2015; amd. Sec. 100, Ch. 261, L. 2021.

75-5-704. Watershed advisory groups. (1) In implementing the consultation requirements under 75-5-702(4) and 75-5-703(1) and (2), the department shall request the participation of representatives of the following interest groups to work in an advisory capacity with the local conservation districts and the department:

(a) livestock-oriented agriculture;

(b) farming-oriented agriculture;

(c) conservation or environmental interests;

(d) water-based recreationists;

(e) the forestry industry;

(f) municipalities;

(g) affected or potentially affected point source dischargers;

(h) mining;

(i) existing local watershed groups;

(j) federal land management agencies;

(k) state trust land management agencies;

(l) the tourism industry;

(m) the hydroelectric industry, if applicable; and

(n) fishing-related businesses.

(2) In implementing the consultation requirements of 75-5-702 and 75-5-703, the department shall:

(a) prior to consultation with the statewide TMDL advisory group pursuant to 75-5-702(7) and (8), schedule meetings with appropriate local conservation districts and the watershed advisory groups at a location within their affected geographic area to review and revise the list of water bodies provided for in 75-5-702; and

(b) at a meeting held pursuant to subsection (2)(a), request whether there is new information that may affect the listing or priority ranking on water bodies within the affected area and solicit comments on revising the list.

(3) Based upon the information provided pursuant to subsection (2)(b), the department shall revise the list according to 75-5-702.

(4) Prior to and during the development of a TMDL within a particular watershed or basin, the department shall schedule a meeting or meetings with appropriate local conservation districts and watershed advisory groups at a location within the affected geographic area in order to solicit comments on developing the TMDL and information on sources that may be contributing to water quality impairment.

History: En. Sec. 5, Ch. 541, L. 1997.

75-5-705. Nonimpairment of water rights. Nothing in this part may be construed to divest, impair, or diminish any water right recognized pursuant to Title 85.

History: En. Sec. 6, Ch. 541, L. 1997.

Part 8
Concentrated Animal Feeding Operations

75-5-801. Definitions. For the purposes of this part, the following definitions apply:

(1) "Animal feeding operation" means a lot or facility where the following conditions are met:

(a) animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and

(b) crops, vegetation, forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(2) "Concentrated animal feeding operation" means an animal feeding operation that is defined as a large concentrated animal feeding operation or as a medium concentrated animal feeding operation or that is designated as a concentrated animal feeding operation in accordance with 40 CFR, part 122. Two or more animal feeding operations under common ownership are considered to be a single animal feeding operation for the purposes of determining the number of animals at an operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

(3) "Large concentrated animal feeding operation" means an animal feeding operation that stables or confines at a minimum:

(a) 700 mature dairy cows, whether milked or dry;

(b) 1,000 veal calves;

(c) 1,000 cattle other than mature dairy cows or veal calves;

(d) 2,500 swine each weighing 55 pounds or more;

(e) 10,000 swine each weighing less than 55 pounds;

(f) 500 horses;

(g) 10,000 sheep or lambs;

(h) 55,000 turkeys;

(i) 30,000 laying hens or broilers if the animal feeding operation uses a liquid manure-handling system;

(j) 125,000 chickens, other than laying hens, if the animal feeding operation uses other than a liquid manure-handling system;

(k) 82,000 laying hens if the animal feeding operation uses other than a liquid manure-handling system;

(l) 30,000 ducks if the animal feeding operation uses other than a liquid manure-handling system; or

(m) 5,000 ducks if the animal feeding operation uses a liquid manure-handling system.

(4) "Medium concentrated animal feeding operation" means an animal feeding operation with the type and number of animals that fall within any of the ranges listed in subsection (4)(a) and that has been defined or designated as a concentrated animal feeding operation. An animal feeding operation is defined as a medium concentrated animal feeding operation if:

(a) the type and number of animals that it stables or confines falls within any of the following ranges:

(i) 200-699 mature dairy cows, whether milked or dry;

(ii) 300-999 veal calves;

(iii) 300-999 cattle other than mature dairy cows or veal calves;

(iv) 750-2,499 swine each weighing 55 pounds or more;

(v) 3,000-9,999 swine each weighing less than 55 pounds;
(vi) 150-499 horses;
(vii) 3,000-9,999 sheep or lambs;
(viii) 16,500-54,999 turkeys;
(ix) 9,000-29,999 laying hens or broilers if the animal feeding operation uses a liquid manure-handling system;
(x) 37,500-124,999 chickens, other than laying hens, if the animal feeding operation uses other than a liquid manure-handling system;
(xi) 25,000-81,999 laying hens if the animal feeding operation uses other than a liquid manure-handling system;
(xii) 10,000-29,999 ducks if the animal feeding operation uses other than a liquid manure-handling system; or
(xiii) 1,500-4,999 ducks if the animal feeding operation uses a liquid manure-handling system; and
(b) either of the following conditions is met:
(i) pollutants are discharged into waters of the state through a constructed ditch, flushing system, or other similar constructed device; or
(ii) pollutants are discharged directly into waters of the state that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

History: En. Sec. 1, Ch. 403, L. 2005; amd. Sec. 2497, Ch. 56, L. 2009.

75-5-802. Permitting — concentrated animal feeding operation. (1) For the purpose of permitting concentrated animal feeding operations, the department shall adopt, by reference, the federal regulations and definitions contained in 40 CFR, parts 122.23 and 412.

(2) Subject to the provisions of subsection (3), concentrated animal feeding operations that meet the requirements of 40 CFR, part 412, must be authorized by the department under a general permit.

(3) If, upon review of an application for a general permit authorization for a concentrated animal feeding operation production area, the department discovers site-specific information that indicates that a general permit authorization is not sufficiently protective of water quality, the department shall require an individual permit.

History: En. Sec. 2, Ch. 403, L. 2005; amd. Sec. 54, Ch. 324, L. 2021.

75-5-803. Fees for concentrated animal feeding operation permits — environmental review. (1) (a) The fees for a general permit authorization or an individual permit are $600 for the initial application and $600 for each renewal.

(b) In addition to the fees provided for in subsection (1)(a), there is an annual fee for a general permit authorization or an individual permit. The fee is $600 and is subject to the annual fee reduction provisions in 75-5-516(2)(b).

(2) The department is required to conduct only the type of environmental assessment that would be conducted for a routine action with limited environmental impact pursuant to Title 75, chapter 1, part 2, as the necessary level of environmental review for concentrated animal feeding operations that qualify for a general permit pursuant to 75-5-802. For concentrated animal feeding operations that require an individual permit, the level of environmental review must be an environmental assessment unless the department determines that an environmental impact statement is required pursuant to 75-1-201. A programmatic environmental impact statement is not required for permitting conducted under 75-5-802.

History: En. Sec. 3, Ch. 403, L. 2005.

Part 9
Phosphorus-Containing Household Cleaning Products

75-5-901. Short title. This part may be cited as the "Phosphorus Ban Act".

History: En. Sec. 1, Ch. 245, L. 2009.

75-5-902. Findings — purpose. (1) The legislature finds that:
(a) high levels of phosphorus in water bodies results in heavy growths of algae;

(b) excessive algae growth degrades aquatic habitats, decreases diversity in aquatic invertebrate communities, and places stress on native fish populations;

(c) municipal wastewater treatment plants and individual septic systems are sources of phosphorus, an ingredient in many household cleaning products; and

(d) Montana has adopted numeric water quality standards for phosphorus.

(2) Consistent with the policy established in 75-5-101 to conserve water by protecting, maintaining, and improving the quality and potability of water for public water supplies, wildlife, fish and aquatic life, agriculture, industry, recreation, and other beneficial uses, the purpose of this part is to limit the introduction of phosphorus into water bodies from municipal point source discharges or the cumulative effect of individual septic system discharges.

History: En. Sec. 2, Ch. 245, L. 2009.

75-5-903. Definitions. As used in this part, the following definitions apply:

(1) "Commercial establishment" means any premises used for the purpose of carrying on or exercising any trade, business, profession, vocation, or commercial or charitable activity, including but not limited to laundries, hospitals, hotels, motels, and food or restaurant establishments.

(2) (a) "Household cleaning product" means any product, including but not limited to soaps and detergents, used for domestic cleaning purposes, which include but are not limited to the cleaning of fabrics, dishes, food utensils, and household premises.

(b) The term does not mean food, drugs, cosmetics, or personal care items such as toothpaste, shampoo, or hand soap.

(3) "Phosphorus" means the element phosphorus as indicated in the periodic table of elements.

(4) "Trace quantity" means an incidental amount of phosphorus that is not part of a household cleaning product formulation, that is present only as a consequence of manufacturing, and that does not exceed 0.5% of the content of the product by weight expressed as the element phosphorus.

History: En. Sec. 3, Ch. 245, L. 2009.

75-5-904. Applicability to counties — notification. (1) The provisions of 75-5-905 apply to counties where one or more surface water bodies exceed the numeric algal biomass or total phosphorus standards adopted pursuant to 75-5-301.

(2) The department shall notify counties that meet the provisions of subsection (1) that they are subject to the provisions of 75-5-905.

(3) The governing body of a county that does not meet the provisions of subsection (1) may adopt an ordinance pursuant to Title 75, chapter 7, part 4.

History: En. Sec. 4, Ch. 245, L. 2009.

75-5-905. Prohibitions and exceptions. (1) In counties that meet the requirements of 75-5-904, a household cleaning product may not be distributed, sold, offered, or exposed for sale if it contains phosphorus in concentrations in excess of a trace quantity.

(2) The following cleaning agents and other products containing phosphorus are exempt from the provisions of this section:

(a) those used in food or beverage processing;

(b) those used by health care services and facilities;

(c) those used by institutional or commercial establishments;

(d) those used for industrial processes; and

(e) those used for agricultural operations.

History: En. Sec. 5, Ch. 245, L. 2009.

Part 10 reserved

Part 11
Water Pollution Control State Revolving Fund

Part Cross-References

Water and Wastewater Operators' Advisory Council, 2-15-2105.

Metropolitan sanitary and/or storm sewer districts, Title 7, ch. 13, part 1.

County water and/or sewer districts, Title 7, ch. 13, part 22 and 23.
Consolidated local government waters supply and sewer districts, Title 7, ch. 13, part 30.
Municipal sewage and/or water systems, Title 7, ch. 13, part 43.
Water treatment plant operators, Title 37, ch. 42.

75-5-1101. Short title. This part may be cited as the "Water Pollution Control State Revolving Fund Act".

History: En. Sec. 1, Ch. 678, L. 1989; amd. Sec. 2, Ch. 538, L. 1997.

75-5-1102. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Administrative costs" means costs incurred by the department and the department of natural resources and conservation in the administration of the program, including but not limited to costs of servicing loans and issuing debt; program startup costs; financial, management, and legal consulting fees; and reimbursement costs for support services from other state agencies.

(2) "Cost" means, with reference to a project, all capital costs incurred or to be incurred by a municipality or a private person, including but not limited to engineering, construction, financing, and other fees, interest during construction, and a reasonable allowance for contingencies to the extent permitted by the federal act and regulations promulgated under the federal act.

(3) "Federal act" means the Federal Water Pollution Control Act, also known as the Clean Water Act, 33 U.S.C. 1251 through 1387, as amended.

(4) "Intended use plan" means the annual plan adopted by the department and submitted to the environmental protection agency that describes how the state intends to use the money in the revolving fund.

(5) "Loan" means a loan of money from the revolving fund to a municipality or a private person.

(6) "Municipality" means any state agency, city, town, or other public body created pursuant to state law, including an authority as defined in 75-6-304.

(7) "Private person" means an individual, corporation, partnership, or other nongovernmental legal entity.

(8) "Program" means the water pollution control state revolving fund program established by this part.

(9) "Project" means an activity that is eligible for financing by the program under the federal act, including treatment works, as defined under section 1292 of the federal act (33 U.S.C. 1292), and nonpoint source pollution control under section 1329 of the federal act (33 U.S.C. 1329), and for which a municipality or private person makes an application for a loan or other financial assistance.

(10) "Revolving fund" means the fund established by 75-5-1106.

History: En. Sec. 2, Ch. 678, L. 1989; amd. Sec. 3, Ch. 538, L. 1997; amd. Sec. 22, Ch. 498, L. 1999; amd. Sec. 1, Ch. 506, L. 2001; amd. Sec. 36, Ch. 489, L. 2009.

Cross-References

Water quality generally — chapter definitions, 75-5-103.

75-5-1103. Water pollution control state revolving fund program. There is a program under which the state may provide financial assistance to municipalities and private persons to finance or refinance part or all of the cost of projects. The program must be administered in accordance with this part and the federal act.

History: En. Sec. 3, Ch. 678, L. 1989; amd. Sec. 4, Ch. 538, L. 1997.

75-5-1104. Authorization of agreement — content. (1) The department may enter into a capitalization grant agreement or other agreement with the United States environmental protection agency to implement the program and may accept from that agency other grants and loans to carry out the program.

(2) In entering into the agreement, the director of the department may commit the state to:

(a) accept grant payments from the environmental protection agency in accordance with the schedule established by the administrator of that agency and deposit the payments in the revolving fund established in 75-5-1106;

(b) deposit in the revolving fund from state money an amount equal to at least 20% of the total amount of all capitalization grants made to the state as provided by 75-5-1106 on or before the date on which each quarterly federal grant payment is made to the state;

(c) provide financial assistance to municipalities and private persons in accordance with this part in an amount equal to 120% of the amount of each grant payment within a time period not to exceed 1 year after receipt of a grant;

(d) expend all funds in the revolving fund in an expeditious and timely manner;

(e) use all funds deposited in the revolving fund as a result of the capitalization grant to ensure progress, as determined by the governor of the state, toward compliance with enforceable deadlines, goals, and requirements of the federal act;

(f) expend each quarterly grant payment in accordance with the laws and procedures applicable to commitment or expenditure of revenues of the state;

(g) use accounting, audit, and fiscal procedures conforming to generally accepted government accounting standards;

(h) as a condition of making a loan or providing other financial assistance from the revolving fund, require that the municipality or private person will maintain project accounts in accordance with generally accepted government accounting standards;

(i) make annual reports to the environmental protection agency concerning the use of the revolving fund as required by the federal act; and

(j) any other covenants, commitments, and obligations necessary to ensure that the state's administration of the program is consistent with the provisions of this part.

History: En. Sec. 4, Ch. 678, L. 1989; amd. Sec. 5, Ch. 538, L. 1997.

75-5-1105. Rulemaking. The department and the department of natural resources and conservation may adopt rules to implement the provisions of this part, including rules:

(1) prescribing the form and content of applications for loans and refinancing agreements;

(2) governing the application of the criteria for awarding loans;

(3) establishing additional terms and conditions for the making of loans and the security instruments and other necessary agreements; and

(4) establishing ceilings on the amount of individual loans to be made to municipalities and private persons, if considered appropriate and necessary for the successful administration of the program.

History: En. Sec. 9, Ch. 678, L. 1989; amd. Sec. 186, Ch. 418, L. 1995; amd. Sec. 6, Ch. 538, L. 1997.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

75-5-1106. Revolving fund. (1) There is established in the state treasury a separate account designated as the water pollution control state revolving fund. There are established in the revolving fund as subaccounts a federal allocation account, a state allocation account, an administration account, an investment income account, and a debt service account.

(2) There must be credited to:

(a) the federal allocation account, all amounts received by the state from the following sources:

(i) funds provided pursuant to the federal act as capitalization grants for a state revolving fund to assist construction of projects;

(ii) grants or transfers of grants received under subchapter II of the federal act for projects; and

(iii) money transferred to the fund from the drinking water state revolving fund pursuant to 75-6-211;

(b) the state allocation account:

(i) the net proceeds of bonds of the state issued pursuant to 75-5-1121, less any proceeds deposited to the administration account as provided in subsection (2)(c)(ii); and

(ii) other money appropriated by the legislature;

(c) the administration account, an amount not to exceed 4% of the capitalization grant award or the maximum amount allowed by the federal act for payment of administrative costs and that may include a combination of:

(i) federal funds; and

(ii) the proceeds of bonds of the state issued pursuant to 75-5-1121 as the department determines necessary and as required by the federal act for state matching funds to assist in administering the program;

(d) the investment account, all money received from investment of amounts in those accounts in the revolving fund designated by the board of examiners in the resolution or trust indenture authorizing the issuance of bonds; and

(e) the debt service account, the interest portion of loan repayments.

(3) Each loan made as authorized by 75-5-1113 must be funded and disbursed from the federal allocation account or the state allocation account, or both, by the department and the department of natural resources and conservation as recommended by the department. All amounts received in payment of principal or interest on a loan must be credited to the revolving fund. If bonds have been issued pursuant to 75-5-1121 and are outstanding, the interest payments must be transferred to the debt service account securing the bonds. Money in the debt service account that is not required for debt service may be transferred to other accounts within the revolving fund as provided in the resolution or trust indenture authorizing the bonds. The department may transfer payments and prepayments of the principal of loans deposited in the state allocation account to the state allocation account of the state's drinking water revolving fund program.

(4) The department of natural resources and conservation may establish additional accounts and subaccounts within the revolving fund as it considers necessary to account for the program money and to ensure compliance with the federal act and this part.

(5) As allowed under the federal Safe Drinking Water Act, 42 U.S.C. 300f, et seq., the governor may reserve or transfer from the water pollution control state revolving fund program capitalization grant to the state's drinking water revolving fund program an amount up to 33% of the state's drinking water revolving fund program capitalization grant.

History: En. Sec. 5, Ch. 678, L. 1989; amd. Sec. 1, Ch. 788, L. 1991; amd. Sec. 187, Ch. 418, L. 1995; amd. Sec. 7, Ch. 538, L. 1997; amd. Sec. 1, Ch. 421, L. 1999.

75-5-1107. Uses of revolving fund. Money in the revolving fund may be used to:

(1) make loans to municipalities to finance all or a portion of the cost of a project and to make loans to private persons to finance all or a portion of the cost of nonpoint source pollution control projects;

(2) buy or refinance debt obligations of municipalities that were issued to finance projects within the state at or below market rates, provided that the obligations were incurred after March 7, 1985;

(3) guarantee or purchase insurance for obligations of municipalities that were issued to finance projects in order to enhance credit or reduce interest rates;

(4) provide a source of revenue or security for general obligation bonds the proceeds of which are deposited in the revolving fund;

(5) provide loan guarantees for similar revolving funds established by municipalities;

(6) earn interest on fund accounts;

(7) pay reasonable administrative costs of the program not to exceed 4% of all federal grant awards to the fund or the maximum amount allowed under the federal act; and

(8) provide additional subsidization to eligible recipients in the form of forgiveness of principal of loans to the extent authorized or required by federal law and subject to satisfaction of conditions on loans described in 75-5-1113 or to satisfy any other incentives, conditions, or requirements of federal law related to the program.

History: En. Sec. 6, Ch. 678, L. 1989; amd. Sec. 8, Ch. 538, L. 1997; amd. Sec. 37, Ch. 489, L. 2009; amd. Sec. 1, Ch. 297, L. 2011.

75-5-1108. Use of funds — statutory appropriation. Money in the revolving fund is statutorily appropriated, as provided in 17-7-502, for the purposes of making loans to municipalities and private concerns and paying debt service on obligations.

History: En. Sec. 12, Ch. 678, L. 1989; amd. Sec. 53, Ch. 422, L. 1997.

75-5-1109 and 75-5-1110 reserved.

75-5-1111. Applications. (1) The department shall, after consultation with the department of natural resources and conservation, establish loan application procedures, including forms for the applications. Each application for a loan to finance construction of a project must include:

(a) a reasonably detailed description of the project;

(b) a reasonably detailed estimate of the cost of the project;

(c) a timetable for the construction of the project and for payment of the cost of the project;

(d) identification of the source or sources of funds to be used in addition to the proceeds of the loan to pay the cost of the project;

(e) the source or sources of revenue proposed to be used to repay the loan;

(f) a current financial statement showing assets, liabilities, revenue, and expenses of the applicant;

(g) if the applicant is a municipality, a statement as to whether, at the time of application, there are any outstanding loans, notes, bonds, or other obligations of the municipality that were issued or incurred to finance any part of the municipality's project or system of which the project is a part and, if so, a description of the loans, notes, bonds, or other obligations;

(h) if the applicant is a private person, a statement as to whether, at the time of application, there are any outstanding loans, notes, or other obligations of the private person and, if so, a description of the loans, notes, or other obligations; and

(i) any other information that the department or the department of natural resources and conservation may require to determine the feasibility of a project and the applicant's ability to repay the loan, including but not limited to engineering reports, economic feasibility studies, and legal opinions.

(2) Each application for a loan to refinance a project, including a purchase of outstanding obligations issued by a municipality to finance a project in whole or in part, must include:

(a) a reasonably detailed description of the project;

(b) a schedule of the cost of the project;

(c) the date on which construction of the project began;

(d) a description of the loans, notes, bonds, or other obligations to be refinanced and of any other loans, notes, bonds, or obligations issued or incurred to finance any part of the municipality's project; and

(e) any other information that the department or the department of natural resources and conservation may require.

(3) Each application for financial assistance in the form of a guaranty or the purchase of insurance for a municipal obligation must include all items required by subsection (1) and any other information the department may require.

History: En. Sec. 7, Ch. 678, L. 1989; amd. Sec. 9, Ch. 538, L. 1997.

75-5-1112. Evaluation of projects and loan applications. The department of natural resources and conservation and the department shall evaluate projects and loan applications. In evaluating projects and loan applications, the following factors must be considered:

(1) the technical design of the project to ensure compliance with all applicable statutes, rules, and design standards;

(2) the financial capacity of the municipality or private person to repay the loan;

(3) the financial, managerial, and technical ability of the municipality or private person to properly operate and maintain the project;

(4) the feasibility of project completion given the total financing available;

(5) the ability of the municipality or private person to pay the costs of the project without the requested financial assistance;

(6) the total amount of loan funds available for financial assistance in the revolving fund;

(7) the total amount requested in other applications that have been received or that are likely to be received;

(8) the ranking of the project on the priority list or intended use plan; and

(9) any other criteria that the department determines appropriate, considering the purposes of the federal act and the program.

History: En. Sec. 8, Ch. 678, L. 1989; amd. Sec. 18, Ch. 553, L. 1995; amd. Sec. 10, Ch. 538, L. 1997.

75-5-1113. Conditions on loans. (1) Upon approval of a project by the department, the department of natural resources and conservation may lend amounts on deposit in the revolving fund to a municipality or private person to pay part or all of the cost of a project or to buy or refinance an outstanding obligation of a municipality that was issued to finance a project. The loan is subject to the municipality or private person complying with the following conditions:

(a) meeting requirements of financial capability set by the department of natural resources and conservation to ensure sufficient revenue to operate and maintain the project for its useful life and to repay the loan, including the establishment and maintenance by the municipality of a reserve or revolving fund to secure the payment of principal of and interest on the loan to the extent permitted by the applicable law governing the municipality's obligation;

(b) agreeing to operate and maintain the project properly over its structural and material design life, which may not be less than the term of the loan;

(c) agreeing to maintain proper financial records in accordance with generally accepted accounting standards and agreeing that all records are subject to audit;

(d) meeting the requirements listed in the federal act for projects constructed with funds directly made available by federal capitalization grants;

(e) providing legal assurance that all necessary property titles, easements, and rights-of-way have been obtained to construct, operate, and maintain the project;

(f) submitting an engineering report evaluating the proposed project, including information demonstrating its cost-effectiveness and environmental information necessary for the department and the department of natural resources and conservation to fulfill their responsibilities under the Montana Environmental Policy Act and rules adopted to implement that act;

(g) complying with plan and specification requirements and other requirements established by the department; and

(h) providing for proper construction inspection and project management.

(2) Each loan, unless prepaid, is payable subject to the limitations of the federal act, with interest paid in annual or more frequent installments.

(3) (a) Subject to the limitations of the federal act, the interest rate on a loan must ensure that the interest payments on the loan and on other outstanding loans will be sufficient, if paid timely and in full, with other available funds in the revolving fund, including investment income, to enable the state to pay the principal of and interest on the bonds issued pursuant to 75-5-1121.

(b) The interest rate must be determined as of the date the loan is authorized by the department of natural resources and conservation.

(c) The rate may include any additional rate that the department of natural resources and conservation considers reasonable or necessary to provide a reserve for the repayment of the loans. The additional rate may be fixed or variable or may be calculated according to a formula, and it may differ from the rate established for any other loan. Once the reserve has been established at a level considered by the department to be reasonable and prudent for the loans outstanding, the department may use excess reserve payments to make grants to aid in the feasibility of projects.

(4) Each loan must be evidenced by a bond, note, or other evidence of indebtedness of the municipality or private person, in a form prescribed or approved by the department of natural resources and conservation, except that the bond, note, or other evidence must include provisions required by the federal act and must be consistent with the provisions of this part. The bond, note, or other evidence is not required to be identical for all loans. The department of natural resources and conservation may require that loans to private persons be further secured by a mortgage and other security interests in the project that is being financed or other forms of additional security as considered necessary, including personal guarantees and letters of credit.

(5) As a condition to making a loan, the department of natural resources and conservation, with the concurrence of the department, may impose a reasonable administrative fee that may be paid from the proceeds of the loan or other available funds of the municipality or private person. Administrative fees may be deposited:

(a) in a special administrative costs account that the department of natural resources and conservation may create for that purpose outside the revolving fund provided for in 75-5-1106; or

(b) in the administration account. Money deposited in the administration account established in 75-5-1106 must be used for the payment of administrative costs of the program. Money deposited in the special administration costs account must be used for the payment of administrative costs of the program unless not required for that purpose, in which case the money may be transferred to other funds and accounts in the program.

History: En. Sec. 10, Ch. 678, L. 1989; amd. Sec. 2, Ch. 788, L. 1991; amd. Sec. 19, Ch. 553, L. 1995; amd. Sec. 267, Ch. 42, L. 1997; amd. Sec. 11, Ch. 538, L. 1997; amd. Sec. 2, Ch. 421, L. 1999; amd. Sec. 11, Ch. 342, L. 2009; amd. Sec. 1, Ch. 72, L. 2015.

Cross-References

Montana Environmental Policy Act, Title 75, ch. 1, parts 1 and 2.

75-5-1114 through 75-5-1120 reserved.

75-5-1121. Authorization of bonds — allocation of proceeds. (1) Upon request of the department of natural resources and conservation, the board of examiners is authorized to issue and sell bonds of the state as authorized by the legislature to provide money for the program. The bonds are general obligations on which the full faith, credit, and taxing powers of the state are pledged for payment of the principal and interest. The bonds must be issued as provided by Title 17, chapter 5, part 8.

(2) (a) Except as otherwise provided in this subsection (2), the proceeds of the bonds are allocated to the state allocation account or the administration account of the revolving fund, as provided in 75-5-1106.

(b) Any accrued interest and bond proceeds to be used to pay interest must be deposited in the debt service account of the revolving fund.

(c) Proceeds of bonds to be used to pay the costs of issuing the bonds must be deposited in a cost of issuance account established outside of the revolving fund by the board of examiners in the resolution or trust indenture authorizing the issuance of the bonds.

(d) Any premium received must be deposited in the state allocation account, the debt service account, or the cost of issuance account as directed by the board of examiners in the resolution or trust indenture regarding the bonds.

(e) For purposes of 17-5-803 and 17-5-804, the state allocation account and the cost of issuance account constitute a capital projects account. The proceeds must be available to the department and the department of natural resources and conservation and may be used for the purposes authorized in this part without further budgetary authorization.

(3) In the resolution authorizing the sale and issuance of the bonds, the board of examiners, upon the request of the department of natural resources and conservation, may create separate accounts or subaccounts to provide for the payment security of the bonds and may pledge the interest component of the loan repayments credited to the revolving fund and the revolving fund as security for the bonds.

(4) The board of examiners may allow bonds issued under this section to be secured by a trust indenture between the board of examiners and a trustee. The trustee may be a trust company or bank having the powers of a trustee inside or outside the state.

(a) If the board of examiners elects to issue bonds pursuant to a trust indenture, the trustee may, as determined by the board of examiners, hold one or more of the funds and accounts created pursuant to this chapter.

(b) In addition to provisions that the board of examiners determines to be necessary and appropriate to secure the bonds, provide for the rights of the bondholders, and ensure compliance with all applicable law, the trust indenture must contain provisions that:

(i) govern the custody, safeguarding, and disbursement of all money held by the trustee under the trust indenture; and

(ii) permit representatives of the state treasurer, department, or department of natural resources and conservation, upon reasonable notice and at reasonable times, to inspect the trustee's books and records concerning the trust indenture.

(c) A trust indenture or an executed counterpart of a trust indenture developed pursuant to this chapter must be filed with the secretary of state.

History: En. Sec. 11, Ch. 678, L. 1989; amd. Sec. 3, Ch. 788, L. 1991; amd. Sec. 20, Ch. 553, L. 1995; amd. Sec. 12, Ch. 538, L. 1997; amd. Sec. 3, Ch. 421, L. 1999; amd. Sec. 3, Ch. 74, L. 2015; amd. Sec. 1, Ch. 29, L. 2021.

75-5-1122. Creation of debt. The legislature, through the enactment of this law by a two-thirds vote of the members of each house, authorizes the creation of state debt in an amount not to exceed $70 million in principal amount of general obligation bonds outstanding from time to time for the purpose of:

(1) funding the program; and

(2) funding portions of loans on an interim basis pending receipt of:

(a) grant payments from the environmental protection agency for which federal legislation appropriating the proceeds of the grants has been enacted; or

(b) other revenue for the program.

History: En. Sec. 13, Ch. 678, L. 1989; amd. Sec. 1, Ch. 73, L. 1999; amd. Sec. 1, Ch. 18, L. 2003; amd. Sec. 2, Ch. 323, L. 2005; amd. Sec. 2, Ch. 29, L. 2021.

75-5-1123 through 75-5-1125 reserved.

75-5-1126. Projects funded by federal government appropriations. For projects that are funded in part by appropriations from the federal government over a term of years, that have been approved by the department and the department of natural resources and conservation under 75-5-1112, and that are considered to be in compliance with 75-5-1113, the department of natural resources and conservation may advance money to a municipality in anticipation of the receipt of federal funds by the municipality on the following conditions:

(1) congress has authorized the project and has committed to fund the project at a specified dollar amount over a period of years;

(2) other funding agencies will not authorize construction of the project to begin until there is evidence that construction money will be available to the municipality to pay all of the construction costs;

(3) the department and the department of natural resources and conservation determine that it is in the best interest of the state and the state's objectives under the program that the project begin construction prior to the receipt of all federal appropriations; and

(4) the advance of the money will be in the form of a note that is issued pursuant to 7-7-109 in anticipation of a federal grant for which the municipality promises to pay and pledges to the department of natural resources and conservation the proceeds of the grant when received.

History: En. Sec. 1, Ch. 9, L. 2001.

CHAPTER 6
PUBLIC WATER SUPPLIES, DISTRIBUTION, AND TREATMENT

Part 1 — Public Water Supply

75-6-101. Policy.
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75-6-103. Repealed.
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Part 2 — Drinking Water State Revolving Fund Act

75-6-201. Short title.
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75-6-203. Drinking water state revolving fund program.
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75-6-214. Use of funds — statutory appropriation.
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75-6-221. General loan and assistance program.
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75-6-223. Applications for loans.
75-6-224. Loan conditions.
75-6-225. Authorization of bonds — allocation of proceeds.
75-6-226. Loan subsidy for disadvantaged communities.
75-6-227. Creation of debt.
75-6-228 through 75-6-230 reserved.
75-6-231. Intended use plan — advisory committee.
75-6-232. Insurance and guarantee program.
75-6-233 through 75-6-235 reserved.
75-6-236. Projects funded by federal government appropriations.

Part 3 — Regional Water and Wastewater Authority Act

75-6-301. Short title.
75-6-302. Purpose.
75-6-303. Liberal construction.
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75-6-305. Joint exercise of powers by certain public agencies — agreements among agencies — filing of agreement — prohibition against competition — retirement of bonds — consent of public agency.
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75-6-307 through 75-6-309 reserved.
75-6-310. Declaration of authority organization — when public body, corporate and politic.
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75-6-312. Meetings of governing body — annual audit.
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75-6-321. Items included in cost of properties.
75-6-322. Trust indenture.
75-6-323. Sinking fund for revenue bonds.
75-6-324. Collection of revenue and enforcement of covenants — default — suit to compel performance — appointment and powers of receiver.
75-6-325. Statutory mortgage lien.
75-6-326. Rates, fees, and charges — establishment and changes.
75-6-327. Refunding revenue bonds.
75-6-328. Exemption from taxation.
75-6-329. Bonds as legal investment.

Chapter Cross-References

Metropolitan sanitary and storm sewer systems, Title 7, ch. 13, part 1.
County water and sewer districts, 7-13-2203.
Municipal sewage and/or water systems, Title 7, ch. 13, part 43.
Cities and towns — water supplies and regulation, Title 7, ch. 13, part 44.
Nuisances, Title 27, ch. 30.
Water treatment plant operators, Title 37, ch. 42.
Licensing of plumbers, Title 37, ch. 69, part 3.
Penalties, fees, and interest, Title 75, ch. 1, part 10.
Applicability of public water supply laws to subdivisions, 76-4-131.
Water and ground water — policy of state, 85-1-101.

Part 1
Public Water Supply

Cross-References
Exceptions to permit requirements, 85-2-306.

75-6-101. Policy. It is the public policy of this state to protect, maintain, and improve the quality and potability of water for public water supplies and domestic uses.

History: En. Sec. 140, Ch. 197, L. 1967; R.C.M. 1947, 69-4901.

Cross-References
Exclusion of municipalities — appropriation for public water supplies, 85-2-317.

75-6-102. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Applicant" means a person who submits plans and specifications for approval pursuant to this part.

(2) "Board" means the board of environmental review provided for in 2-15-3502.

(3) "Certified source water protection area" means an area certified by the department that identifies the surface and subsurface area surrounding a source of water for a public water supply system through which contaminants may move toward and reach the source of supply.

(4) "Community water system" means a public water supply system that serves at least 15 service connections used by year-round residents or that regularly serves at least 25 year-round residents.

(5) "Contamination" means impairment of the quality of state waters by sewage, industrial waste, or other waste creating a hazard to human health.

(6) "Cross-connection" means a connection between a public water supply system and another water supply system, either public or private, or a wastewater or sewerline or other potential source of contamination so that a flow of water into or contamination of the public water supply system from the other source of water or contamination is possible.

(7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Drainage" means rainfall, surface, and subsoil water.

(9) "Eligible county water and/or sewer district" means a county water district, a county sewer district, or a county water and sewer district that:

(a) is incorporated under 7-13-2203;

(b) is operated in compliance with the discharge permitting requirements of Title 75, chapter 5, and this chapter; and

(c) employs or retains a professional engineer.

(10) "Industrial waste" means any waste substance from the processes of business or industry or from the development of a natural resource, together with any sewage that may be present.

(11) "Maximum contaminant level" means the maximum permissible level of a contaminant in water that is delivered to a user of a public water supply system.

(12) "Other waste" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(13) "Person" means an individual, firm, partnership, company, association, corporation, city, town, local government entity, federal agency, or any other governmental or private entity, whether organized for profit or not.

(14) (a) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that which is permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor or the discharge or introduction of a liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

(b) A discharge that is authorized under the pollution discharge permit rules of the board is not pollution under this chapter.

(15) "Public sewage system" means a system of collection, transportation, treatment, or disposal of sewage that serves 15 or more families or 25 or more persons daily for any 60 or more days in a calendar year.

(16) "Public water supply system" means a system for the provision of water for human consumption from a community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that has at least 15 service connections or that regularly serves at least 25 persons daily for any 60 or more days in a calendar year.

(17) "Reclaimed wastewater" means wastewater that is treated by a public sewage system for reuse for private, public, or commercial purposes.

(18) "Safe Drinking Water Act" means 42 U.S.C. 300f and regulations set forth in 40 CFR, parts 141 and 142.

(19) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings, together with ground water infiltration and surface water present.

(20) "Source water protection program" means a program administered by the department to certify source water protection delineation and assessment reports and source water protection plans and to review source water protection ordinances.

(21) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

(22) "Transient noncommunity water system" means a public water supply system that is not a community water system and that does not regularly serve at least 25 of the same persons for at least 6 months a year.

History: En. Sec. 141, Ch. 197, L. 1967; amd. Sec. 1, Ch. 67, L. 1974; amd. Sec. 1, Ch. 556, L. 1977; R.C.M. 1947, 69-4902; amd. Sec. 1, Ch. 556, L. 1979; amd. Sec. 2, Ch. 312, L. 1989; amd. Sec. 1, Ch. 645, L. 1991; amd. Sec. 188, Ch. 418, L. 1995; amd. Sec. 3, Ch. 488, L. 1995; amd. Secs. 525, 568, Ch. 546, L. 1995; amd. Sec. 1, Ch. 315, L. 2001; amd. Sec. 2, Ch. 423, L. 2007; amd. Sec. 1, Ch. 85, L. 2011; amd. Sec. 1, Ch. 341, L. 2021; amd. Sec. 1, Ch. 486, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 486, L. 2025. Amendment effective October 1, 2025.

Cross-References

Water treatment plants and distribution systems, 37-42-101, 75-5-401, 75-5-403.

75-6-103. Repealed. Sec. 111, Ch. 324, L. 2021.

History: En. Sec. 142, Ch. 197, L. 1967; amd. Sec. 70, Ch. 349, L. 1974; amd. Sec. 2, Ch. 556, L. 1977; R.C.M. 1947, 69-4903; amd. Sec. 2, Ch. 556, L. 1979; amd. Sec. 2, Ch. 197, L. 1989; amd. Sec. 2, Ch. 645, L. 1991; amd. Sec. 13, Ch. 471, L. 1995; amd. Sec. 4, Ch. 488, L. 1995; amd. Sec. 8, Ch. 73, L. 1997; amd. Sec. 2, Ch. 511, L. 1999; amd. Sec. 3, Ch. 423, L. 2007; amd. Sec. 1, Ch. 85, L. 2009; amd. Sec. 2, Ch. 449, L. 2009; amd. Sec. 2, Ch. 85, L. 2011.

75-6-104. Duties of department. (1) The department has general supervision over all state waters that are directly or indirectly being used by a person for a public water supply system, for domestic purposes, or as a source of ice.

(2) The department shall, subject to the provisions of 75-6-116 and as provided in 75-6-131, adopt rules and standards concerning:

(a) maximum contaminant levels for waters that are or will be used for a public water supply system;

(b) fees, as described in 75-6-108, for services rendered by the department;

(c) monitoring, recordkeeping, and reporting by persons who own or operate public water supply systems;

(d) requiring public notice to all users of a public water supply system when a person has been granted a variance or exemption or is in violation of this part or a rule or order issued pursuant to this part;

(e) the siting, construction, operation, and modification of a public water supply system or public sewage system, including requirements to remedy:

(i) defects in the design, operation, or maintenance of a public water supply system or public sewage system in order to prevent or correct introduction of contamination into water used for a public water supply system, for domestic purposes, or as a source of ice;

(ii) fecal contamination in water used by a public water supply system; or

(iii) failure or malfunction of the sources, treatment, storage, or distribution portion of a public water supply system in order to prevent or correct introduction of contamination into water used for a public water supply system, for domestic purposes, or as a source of ice;

(f) the review of the technical, managerial, and financial capacity of a proposed public water supply system or public sewage system, as necessary to ensure the capability of the system to meet the requirements of this part;

(g) the collection and analysis of samples of water used for drinking or domestic purposes;

(h) the issuance of variances and exemptions as authorized by the federal Safe Drinking Water Act and this part;

(i) administrative enforcement procedures and administrative penalties authorized under this part;

(j) standards and requirements for the review and approval of programs that may be voluntarily submitted by suppliers of public water supply systems to prevent water supply contamination from a cross-connection, including provisions to exempt cross-connections from the standards and requirements if all connected systems are department-approved public water supply systems;

(k) (i) allowable uses of reclaimed wastewater and classification of those uses;

(ii) treatment, monitoring, recordkeeping, and reporting standards and requirements tailored to each classification that must be met by the public sewage system to protect the uses of the reclaimed wastewater and any receiving water;

(iii) prohibition of reclaimed wastewater uses that are not allowable under subsection (2)(k)(i) or for which the reclaimed wastewater has not been treated in compliance with rules adopted under subsection (2)(k)(ii); and

(iv) a requirement that an applicant who proposes to use reclaimed wastewater pursuant to this subsection (2)(k) has obtained any necessary authorizations required under Title 85 from the department of natural resources and conservation; and

(l) any other requirement necessary for the protection of public health as described in this part.

(3) Department rules must provide for the following:

(a) except as provided in 75-6-131, a water supply or water distribution facility reviewed and approved by the department is not subject to changes in department design and construction criteria for a period of 36 months after written approval of the facility is issued by the department;

(b) except for facilities subject to permit requirements under Title 75, chapter 5, part 4, and except as provided under rules adopted pursuant to 75-6-131, a system of water supply, drainage, wastewater, or sewage reviewed and approved under this section is not subject to changes in department design or construction criteria for a period of 36 months after written approval is issued by the department;

(c) plans and specifications for a portion of a facility or system subject to a 36-month limit on criteria changes pursuant to subsections (3)(a) and (3)(b) but not constructed within the 36-month timeframe must be resubmitted for department review and approval before construction of that portion of the facility;

(d) the provisions of this subsection (3) may not limit an applicant's ability to alter a proposed project that is otherwise in conformance with applicable laws, rules, standards, and criteria; and

(e) department approval of development plans for a municipal system or an eligible county water and/or sewer district that allows additional connections above the approved rated capacity of a water or wastewater system pursuant to 75-6-130.

(4) The department or the board may issue orders necessary to fully implement the provisions of this part.

(5) The department shall:

(a) on its own initiative or complaint to the department, to the mayor or health officer of a municipality, or to the managing board or officer of a public institution, make an investigation of alleged pollution of a water supply system and, if required, prohibit the continuance of the pollution by ordering removal of the cause of pollution;

(b) have waters examined to determine their quality and the possibility that they may endanger public health;

(c) consult and advise authorities of cities and towns and persons having or about to construct systems for water supply, drainage, wastewater, and sewage as to the most appropriate source of water supply and the best method of ensuring its quality;

(d) advise persons as to the best method of treating and disposing of their drainage, sewage, or wastewater with reference to the existing and future needs of other persons and to prevent pollution;

(e) consult with persons engaged in or intending to engage in manufacturing or other business whose drainage or sewage may tend to pollute waters as to the best method of preventing pollution;

(f) collect fees, as described in 75-6-108, for services and deposit:

(i) the public drinking water fees collected in the public drinking water special revenue fund established in 75-6-115; and

(ii) the plan and specification review fees collected in the plan review special revenue account established in 75-6-132;

(g) establish and maintain experiment stations and conduct experiments to study the best methods of treating water, drainage, wastewater, and sewage to prevent pollution, including investigation of methods used in other states;

(h) enter on premises at reasonable times to determine sources of pollution or danger to water supply systems and whether rules and standards of the department are being obeyed;

(i) enforce and administer the provisions of this part;

(j) establish a plan for the provision of safe drinking water under emergency circumstances;

(k) maintain an inventory of public water supply systems and establish a program for conducting sanitary surveys;

(l) enter into agreements with local boards of health whenever appropriate for the performance of surveys and inspections under the provisions of this part; and

(m) review in the form of a written response within 60 days to an applicant seeking approval for use of reclaimed wastewater for snowmaking subject to subsection (2)(k) that:

(i) approves, approves with conditions, or denies the application pursuant to the provisions of this part; and

(ii) (A) describes additional information that must be submitted prior to department approval under subsection (5)(m)(i); or

(B) describes any additional requirements that the applicant must satisfy prior to department approval under subsection (5)(m)(i), such as a permit to discharge under Title 75, chapter 5, part 4, or an authorization under Title 85 from the department of natural resources and conservation.

History: En. Sec. 143, Ch. 197, L. 1967; amd. Sec. 71, Ch. 349, L. 1974; amd. Sec. 3, Ch. 556, L. 1977; R.C.M. 1947, 69-4904; amd. Sec. 3, Ch. 556, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 3, Ch. 645, L. 1991; amd. Sec. 4, Ch. 423, L. 2007; amd. Sec. 55, Ch. 324, L. 2021; amd. Sec. 2, Ch. 341, L. 2021; amd. Sec. 3, Ch. 353, L. 2023; amd. Sec. 2, Ch. 418, L. 2025; amd. Sec. 2, Ch. 486, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 2, Ch. 418, L. 2025. Amendment effective July 1, 2025.

See 2025 Session Law for amendment made by sec. 2, Ch. 486, L. 2025. Amendment effective October 1, 2025.

Cross-References

Approval of water supply required for dairy products manufacturing plants, 81-22-403.

75-6-105. Records required for wells drilled to supply water to public. Every person drilling a water well to furnish water for public consumption shall keep a complete record of the depth, thickness, and character of different strata and other information prescribed by the department. Data must be furnished to the department on forms prescribed by it. These data are available to the public at all reasonable times.

History: En. Sec. 145, Ch. 197, L. 1967; R.C.M. 1947, 69-4906; amd. Sec. 56, Ch. 324, L. 2021.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records, Title 2, ch. 6.

Water well contractors, Title 37, ch. 43.

75-6-106. Laboratory license required. A laboratory analysis of water taken from a public water supply system or any report of an analysis required by this part or a rule adopted under this part may not be accepted by the department unless the analysis or report is made by the department of public health and human services' laboratory or by a laboratory licensed by the department of public health and human services for water analysis purposes.

History: En. 69-4905.2 by Sec. 5, Ch. 556, L. 1977; R.C.M. 1947, 69-4905.2; amd. Sec. 4, Ch. 556, L. 1979; amd. Sec. 9, Ch. 73, L. 1997; amd. Sec. 57, Ch. 324, L. 2021.

75-6-107. Variances and exemptions. (1) Except as provided in subsection (3), the department may grant a variance or exemption from the requirements of this part or the rules adopted under this part pursuant to the terms and conditions of the variance and exemption rules adopted by the department.

(2) Except as provided in subsection (3), a variance or exemption granted pursuant to this section must be accompanied by a compliance plan specifying a time schedule for compliance.

(3) The department may grant for a period of up to 5 years a variance or exemption for a public water system to use bottled water to achieve compliance with a maximum contaminant level for nitrate. The variance or exemption must include the requirement that the owner of the public water system warn the public that the tap water is not potable and could pose a health risk if consumed by:

(a) posting signs at locations required by the variance or exemption for the period granted by the variance or exemption; and

(b) delivering annual notices as required by the variance or exemption to users of the public water system.

(4) A person aggrieved by a decision of the department to grant, deny, revoke, or modify a variance or exemption may appeal the department's decision to the board as provided in the Montana Administrative Procedure Act.

History: En. 69-4905.1 by Sec. 4, Ch. 556, L. 1977; R.C.M. 1947, 69-4905.1; amd. Sec. 5, Ch. 556, L. 1979; amd. Sec. 1, Ch. 213, L. 2011; amd. Sec. 58, Ch. 324, L. 2021.

Cross-References

Montana Administrative Procedure Act — contested case proceedings, Title 2, ch. 4, part 6.

75-6-108. Department to prescribe fees — opportunity for appeal. (1) The department shall by rule prescribe fees to be assessed annually on owners of public water supply systems to recover department costs in providing services under this part. The annual fee for a public water supply system is no more than $2.25 for each service connection to the public water supply system for the biennium beginning July 1, 1991, and ending June 30, 1993, and thereafter is no more than $2 for each service connection to the public water supply system, although the minimum fee for any system is $100, except that the fee for a transient noncommunity water system is $50.

(2) Public water supply systems in a municipality may raise the rates to recover costs associated with the fees prescribed in this section without the public hearing required in 69-7-111.

(3) The department shall by rule prescribe fees assessed on persons who submit plans and specifications or development plans for construction, alteration, or extension of a public water supply system or public sewage system. The fees must be commensurate with the cost to the department of reviewing the plans and specifications.

(4) Fees collected pursuant to subsection (1) must be deposited in the public drinking water special revenue fund established in 75-6-115.

(5) Fees collected pursuant to subsection (3) must be deposited in the plan review special revenue account established in 75-6-132.

(6) (a) The department shall notify the owner of a public water supply system in writing of the amount of the fee to be assessed and the basis for the assessment. The owner may appeal the fee assessment in writing to the board within 20 days after receipt of the written notice.

(b) An appeal must be based on the allegation that the fee is erroneous or excessive. An appeal may not be based only on the fee schedule adopted by the department.

(c) If any part of the fee assessment is not appealed, it must be paid to the department on receipt of the notice provided for in subsection (6)(a).

History: En. Sec. 4, Ch. 645, L. 1991; amd. Sec. 59, Ch. 324, L. 2021; amd. Sec. 4, Ch. 353, L. 2023; amd. Sec. 3, Ch. 418, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 418, L. 2025. Amendment effective July 1, 2025.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

75-6-109. Administrative enforcement. (1) If the department believes that a violation of this part, a rule adopted under this part, or a condition of approval issued under this part has occurred, it may serve written notice of the violation, by certified mail, on the alleged violator or the violator's agent. The notice must specify the provision of this part, the rule, or the condition of approval alleged to have been violated and the facts alleged to constitute a violation. The notice must include an order to take necessary corrective action within a reasonable period of time. The time period must be stated in the order. Service by mail is complete on the date of filing.

(2) If the alleged violator does not request a hearing before the board within 30 days of the date of service, the order becomes final. Failure to comply with a final order may subject the violator to an action commenced pursuant to 75-6-104, 75-6-113, or 75-6-114.

(3) If the alleged violator requests a hearing before the board within 30 days of the date of service, the board shall schedule a hearing. After the hearing is held, the board may:

(a) affirm or modify the department's order issued under subsection (1) if the board finds that a violation has occurred; or

(b) rescind the department's order if the board finds that a violation has not occurred.

(4) An order issued by the department or the board may set a date by which the violation must cease and set a time limit for action to correct a violation.

(5) As an alternative to issuing an order pursuant to subsection (1), the department may:

(a) require the alleged violator to appear before the board for a hearing, at a time and place specified in the notice, to answer the charges complained of; or

(b) initiate an action under 75-6-111(2), 75-6-113, or 75-6-114.

(6) (a) An action initiated under this part may include an administrative penalty not to exceed:

(i) $1,000 for each day of a violation pertaining to a public water system, other than a water hauler or a water bottling plant, that serves a population of more than 10,000; and

(ii) $500 for each day of violation for other violations.

(b) Administrative penalties collected under this section must be deposited in the state general fund.

(7) In determining the amount of penalty to be assessed to a person, the department or the board, as appropriate, shall consider the penalty factors in 75-1-1001 and the rules promulgated under 75-6-104(2)(i).

(8) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing under 75-6-108 or this section.

History: En. Sec. 6, Ch. 645, L. 1991; amd. Sec. 2, Ch. 302, L. 1995; amd. Sec. 64, Ch. 509, L. 1995; amd. Sec. 10, Ch. 73, L. 1997; amd. Sec. 6, Ch. 195, L. 1999; amd. Sec. 11, Ch. 487, L. 2005.

Cross-References

Montana Administrative Procedure Act — contested case hearings, Title 2, ch. 4, part 6.

75-6-110. Enforcement response. (1) Whenever, on the basis of information available to the department, the department finds that a person is in violation of this part, a rule adopted under this part, or a condition, requirement of an approval, or order issued pursuant to this part, the department shall initiate an enforcement response, which may include any of the following actions:

(a) issuance of a letter notifying the person of the violation and requiring compliance;

(b) issuance of an order requiring the person to correct the violation pursuant to 75-6-104 and 75-6-109;

(c) bringing a judicial action as authorized by 75-6-111; or

(d) seeking administrative or judicial penalties as provided under 75-6-109, 75-6-113, and 75-6-114.

(2) Unless an alleged violation represents an imminent threat to human health, safety, or welfare or to the environment, the department shall first issue a letter notifying the person of the violation and requiring compliance. If the person fails to respond to the conditions in the department's letter, then the department shall take further action as provided in subsection (1).

(3) The provisions of this part do not limit the authority of the department to bring a judicial action, which may include the assessment of penalties, prior to initiating an administrative action authorized by this part.

History: En. Sec. 1, Ch. 302, L. 1995.

75-6-111. Appeal from rule or standard — injunction to require compliance. (1) A person aggrieved by a rule, standard, or order adopted or issued pursuant to this part may appeal to the district court, except as otherwise provided in 75-6-109. While the appeal is pending, the rule, standard, or order is in force.

(2) The department may seek an injunction from the appropriate district court to require compliance with this part or a rule or order issued as authorized by this part. The court may award the department costs and expenses incurred in investigating and abating the violation. The department may also initiate an action to collect a criminal penalty as provided in 75-6-113 or a civil penalty as provided in 75-6-114.

History: En. Sec. 146, Ch. 197, L. 1967; amd. Sec. 72, Ch. 349, L. 1974; amd. Sec. 6, Ch. 556, L. 1977; R.C.M. 1947, 69-4907(1), (2); amd. Sec. 7, Ch. 68, L. 1979; amd. Sec. 1, Ch. 412, L. 1985; amd. Sec. 5, Ch. 645, L. 1991.

Cross-References

Montana Administrative Procedure Act — judicial review, Title 2, ch. 4, part 7.
Costs, Title 25, ch. 10.

75-6-112. Prohibited acts. A person may not:

(1) commence or continue construction, alteration, extension, or operation of a system of water supply or water distribution that is intended to be used as a public water supply system or a system that is intended to be used as a public sewage system before the person submits to the department necessary maps, plans, and specifications for its review and the department approves those maps, plans, and specifications;

(2) operate or maintain a public water supply system that exceeds a maximum contaminant level established by the department unless the person has been granted or has an application pending for a variance or exemption pursuant to this part;

(3) violate any provision of this part or a rule adopted under this part; or

(4) violate any condition or requirement of an approval issued pursuant to this part.

History: En. Sec. 144, Ch. 197, L. 1967; R.C.M. 1947, 69-4905; amd. Sec. 6, Ch. 556, L. 1979; amd. Sec. 1, Ch. 230, L. 1989; amd. Sec. 5, Ch. 488, L. 1995; amd. Sec. 15, Ch. 497, L. 1995; amd. Sec. 7, Ch. 195, L. 1999; amd. Sec. 2, Ch. 315, L. 2001; amd. Sec. 5, Ch. 423, L. 2007; amd. Sec. 60, Ch. 324, L. 2021.

Cross-References

Plan for sewage system or wastewater disposal project — seal of engineer included, 18-2-122.
Nuisance, Title 27, ch. 30.
Action to recover damages to water supply, 75-20-405.

75-6-113. Penalty. Any person violating this part or any rule or order of the board or department issued under the provisions of this part shall be guilty of a misdemeanor and upon conviction shall be fined not less than $50 or more than $500. Each day upon which a violation of this part occurs shall be considered a separate offense.

History: En. Sec. 146, Ch. 197, L. 1967; amd. Sec. 72, Ch. 349, L. 1974; amd. Sec. 6, Ch. 556, L. 1977; R.C.M. 1947, 69-4907(3).

Cross-References

Execution of criminal fine, 46-19-102.

75-6-114. Civil penalty. (1) In an action initiated by the department to collect civil penalties against a person who is found to have violated this part or a rule, order, or condition of approval issued under this part, the person is subject to a civil penalty not to exceed $10,000. The action must be filed in the district court of the county in which the violation occurred.

(2) Each day of violation constitutes a separate violation.

(3) Action under this section does not bar enforcement of this part or a rule, order, or condition of approval issued under this part by injunction or other appropriate remedy.

(4) When seeking penalties under this section, the department shall take into account the penalty factors in 75-1-1001 in determining an appropriate settlement or judgment, as appropriate.

(5) Civil penalties collected pursuant to this section must be deposited in the state general fund.

History: En. Sec. 7, Ch. 645, L. 1991; amd. Sec. 3, Ch. 302, L. 1995; amd. Sec. 65, Ch. 509, L. 1995; amd. Sec. 12, Ch. 487, L. 2005; amd. Sec. 32, Ch. 535, L. 2021.

75-6-115. Public drinking water special revenue fund. (1) There is a public drinking water special revenue fund within the state special revenue fund established in 17-2-102.

(2) There must be credited to the public drinking water special revenue fund the revenue from fees assessed, collected, and allocated pursuant to 75-6-108(4). Funds from the public drinking water special revenue fund may be used only to pay department costs in implementing the public drinking water supply program, as described in this part.

History: En. Sec. 8, Ch. 645, L. 1991; amd. Sec. 66, Ch. 509, L. 1995; amd. Sec. 4, Ch. 418, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 418, L. 2025. Amendment effective July 1, 2025.

75-6-116. State regulations no more stringent than federal regulations or guidelines. (1) After April 14, 1995, except as provided in subsections (2) through (5) or unless required by state law, the department may not adopt a rule to implement this chapter that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The department may incorporate by reference comparable federal regulations or guidelines.

(2) The department may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if the department makes a written finding after a public hearing and public comment and based on evidence in the record that:

(a) the proposed state standard or requirement protects public health or the environment of the state; and

(b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the department's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.

(4) (a) A person affected by a rule of the board adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable federal regulations or guidelines may petition the department to review the rule. If the department determines that the rule is more stringent than comparable federal regulations or guidelines, the department shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The department may charge a petition filing fee in an amount not to exceed $250.

(b) A person may also petition the department for a rule review under subsection (4)(a) if the board or the department adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1).

History: En. Sec. 1, Ch. 471, L. 1995; amd. Sec. 61, Ch. 324, L. 2021.

75-6-117 through 75-6-119 reserved.

75-6-120. Wellhead and source water protection programs — voluntary petitions. (1) The federal Safe Drinking Water Act, including 42 U.S.C. 300h-7 and 300j-13, enables the department to administer wellhead protection and source water assessment programs

that involve delineation of the boundaries of the assessment areas from which a public water system receives supplies of drinking water, certification of local source water protection areas, assessment of source water susceptibility to regulated contaminants, and review of source water protection area ordinances. In administering these programs, the department may perform only those functions provided for by the federal Safe Drinking Water Act and this section.

(2) A supplier of a public water supply system may voluntarily submit for department review and approval a petition to establish a source water protection program for the system.

(3) The department may certify a source water protection area upon:

(a) receipt of a petition by a supplier for a public water supply system; and

(b) making a determination that the source water protection area meets criteria and thresholds for certification established by the Montana source water protection program.

(4) (a) The governing body of the county in which a source water protection area or areas exist may adopt an ordinance to regulate, control, and prohibit conditions that threaten the quality of water used within the source water protection area or areas.

(b) Prior to adopting a source water protection area ordinance, the governing body shall confer with the supplier of the public water supply system and shall then submit the ordinance to the department for review and verification that the ordinance is consistent with the requirements of this chapter.

(c) A source water protection area ordinance must be adopted using the procedures described in 7-5-103 through 7-5-107.

(5) (a) An ordinance adopted under subsection (4) is limited in applicability to the certified source water protection area or areas within the county.

(b) For a source water protection area that is located in two or more counties, the proposed source water protection area ordinance must be adopted by each county in order for the ordinance to be effective.

(6) A source water protection area ordinance adopted under this section may not conflict with and may not duplicate any other federal, state, or local law or regulation, including but not limited to zoning, fire codes, hazardous waste regulation under Title 75, chapter 10, part 4, or pesticide regulation under Title 80, chapter 8.

History: En. Sec. 6, Ch. 488, L. 1995; amd. Sec. 6, Ch. 423, L. 2007.

75-6-121. Delegation of review of small public water and sewer construction. (1) If a local government requests a delegation and the appropriate division of the local government has established satisfactory review programs, the department shall delegate to the division of local government the review of:

(a) small public water and sewer systems; and

(b) extensions or alterations of existing public water and sewer systems.

(2) The department shall adopt rules regarding the delegation of review authority to divisions of local government.

(3) A division of local government conducting a review under this section:

(a) must receive 90% of the review fee, and the department must receive the remaining 10% of the review fee; and

(b) shall complete documents necessary to complete the review and to comply with:

(i) real property takings requirements in accordance with Title 70; and

(ii) determinations of nondegradation and nonsignificance as required in Title 75, chapter 5.

History: En. Sec. 1, Ch. 312, L. 1989; amd. Sec. 62, Ch. 324, L. 2021; amd. Sec. 1, Ch. 611, L. 2023; amd. Sec. 2, Ch. 377, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 377, L. 2025. Amendment effective October 1, 2025.

75-6-122 through 75-6-125 reserved.

75-6-126. Ownership of public water supply system or public sewage system — change in status. (1) A person may not own a public water supply system or a public sewage system unless that person is:

(a) an individual;

(b) a limited partnership;

(c) a limited liability company;
(d) a corporation, whether organized for profit or not;
(e) a city, town, local government entity, or other political subdivision of the state; or
(f) a federal agency.

(2) The owner of a public water supply system or a public sewage system shall, within 90 days after being requested to do so by the department or within 90 days after a transfer in ownership:

(a) submit information on a form provided by the department that details the ownership status of the public water supply system or public sewage system; and
(b) provide other necessary information for the department's records.

History: En. Sec. 3, Ch. 315, L. 2001.

75-6-127 through 75-6-129 reserved.

75-6-130. Development plans — department requirements — rulemaking. (1) Unless authorized by a development plan approved by the department of environmental quality under this section, a public water or wastewater supply system may not certify or authorize additional connections to its water or wastewater system that would exceed its approved rated capacity.

(2) The department shall approve a municipal or eligible county water and/or sewer district development plan to allow additional connections to a public water or wastewater supply system if the municipality or eligible county water and/or sewer district demonstrates that:

(a) the additional connections will not exceed the approved rated capacity of the system;
(b) the additional connections will not create a risk to public health or the environment;
(c) the plan will not cause a violation of any provision of or rule adopted under this part or Title 75, chapter 5 or 6, or any condition or requirement of an approval or order issued pursuant to this part or Title 75, chapter 5 or 6; and
(d) the additional connections will not cause the municipality or eligible county water and/or sewer district to exceed the flow rate, volume, or place of use of its water right as defined under 85-2-102.

(3) A municipality or eligible county water and/or sewer district with a development plan approved under this section shall submit an annual report detailing its compliance with the approved plan to the department.

(4) A development plan approved under this section may be used by the department to approve connections that would exceed the system's approved rated capacity only if the connection would serve a subdivision subject to review under Title 76, chapter 3, and the governing body has required department certification before final plat approval in accordance with 76-3-507(5).

(5) The department may revoke or require modification of an approved development plan if:

(a) the conditions of development have fundamentally changed;
(b) the municipality or eligible county water and/or sewer district has violated the requirements of this section or a condition of an approved development plan; or
(c) the department otherwise determines that the conditions of subsection (2) have not been or will not be satisfied.

(6) A municipality or eligible county water and/or sewer district that violates this section or a condition of an approved development plan is subject to penalties under 75-6-114.

(7) The department may adopt rules to implement this section.

(8) Nothing in this section requires a municipality or eligible county water and/or sewer district to submit a development plan for review unless the municipality or eligible county water and/or sewer district intends to approve connections beyond the system's rated capacity.

(9) As used in this section, the following definitions apply:

(a) "Development plan" means a planning document that outlines the current rated capacity of a water or wastewater system and the system's proposed capacity after upgrades, marked by milestones of construction activity as a percentage of existing capacity, are made to the system and includes a timeline for when the design, bidding, and construction of upgrades to an existing system will be completed.

(b) "Rated capacity" means the gross capacity of a water or wastewater system as required by the design standards provided for in Title 75, chapter 6, wastewater discharge permit limits set in Title 75, chapter 5, and water right limits required in Title 85.

History: En. Sec. 1, Ch. 353, L. 2023; amd. Sec. 3, Ch. 486, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 486, L. 2025. Amendment effective October 1, 2025.

75-6-131. Rules for regional public water supply systems. The department shall adopt rules for approval of regional public water supply systems established by a regional water authority pursuant to Title 75, chapter 6, part 3. The rules must:

(1) include procedures for the construction of regional public water supply systems, including regulatory provisions for a series of project segments over the construction period of the project as contained in the final engineering report, as may be amended and approved by the United States bureau of reclamation, that addresses the:

(a) approval of design and construction standards that may not be subject to change for 72 months;

(b) issuance of deviations from design and construction standards to remain in effect for 72 months; and

(c) approval of an individual regional water supply system's standard construction contract documents and provisions for amendments to those documents to remain in effect for the construction period of the project;

(2) implement plan and specification review periods or deviation request approval periods for storage, pumping, and distribution portions of a regional public water supply system of not more than 40 calendar days for the initial review by the department and not more than 20 working days for any subsequent reviews;

(3) avoid duplicate processes and regulations by coordinating and incorporating the review and approval process applicable to a regional public water supply system by the United States bureau of reclamation.

History: En. Sec. 1, Ch. 449, L. 2009; amd. Sec. 63, Ch. 324, L. 2021.

75-6-132. Plan review special revenue account. (1) There is a plan review special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be credited to the account the revenue from fees assessed, collected, and allocated pursuant to 75-6-108(3).

(3) Funds from the account may be used only to pay department costs in implementing plan and specification review, as described in this part.

History: En. Sec. 1, Ch. 418, L. 2025.

Compiler's Comments

Effective Date: Section 6, Ch. 418, L. 2025, provided: "[This act] is effective July 1, 2025."

Part 2
Drinking Water State Revolving Fund Act

Part Cross-References

Water supply and regulation, Title 7, ch. 13, part 44.

75-6-201. Short title. This part may be cited as the "Drinking Water State Revolving Fund Act".

History: En. Sec. 1, Ch. 553, L. 1995; amd. Sec. 13, Ch. 538, L. 1997.

75-6-202. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Administrative costs" means costs incurred by the department and the department of natural resources and conservation in the administration of the program, including but not limited to:

(a) costs of servicing loans and issuing debt;

(b) program startup costs;

(c) financial, management, and legal consulting fees; and

(d) reimbursement costs for support services from other state agencies.

(2) "Community water system" means a public water system that is owned by a private person or a municipality and that serves at least 15 service connections used by year-round residents of the area served by the system or regularly serves at least 25 year-round residents. The term does not include a public water system that is owned by the federal government.

(3) "Cost" means, with reference to a project, all capital costs incurred or to be incurred for a public water system, including but not limited to:

(a) engineering, financing, and other fees;

(b) interest during construction;

(c) construction; and

(d) a reasonable allowance for contingencies to the extent permitted by the federal act and rules promulgated under the federal act.

(4) "Department" means the department of environmental quality provided for in 2-15-3501.

(5) "Disadvantaged community" means one in which the service area of a public water system meets the affordability criteria established by rule adopted pursuant to this part.

(6) "Federal act" means the federal Safe Drinking Water Act, 42 U.S.C. 300f, et seq., as that act read on May 5, 1997.

(7) "Indian tribe" means an Indian tribe that has a federally recognized governing body carrying out substantial governmental duties and powers over any area.

(8) "Intended use plan" means the annual plan adopted by the department and submitted to the environmental protection agency that describes how the state intends to use the money in the revolving fund.

(9) "Loan" means a loan of money from the revolving fund for project costs.

(10) "Municipality" means a state agency, city, town, or other public body, including an authority as defined in 75-6-304, created pursuant to state law or an Indian tribe.

(11) "Noncommunity water system" means a public water system that is not a community water system.

(12) "Nonprofit noncommunity water system" means a noncommunity water system owned by an organization that is organized under Montana law and that qualifies as a tax-exempt organization under the provisions of section 501(c)(3) of the Internal Revenue Code.

(13) "Private person" means an individual, corporation, partnership, or other nongovernmental legal entity.

(14) "Program" means the drinking water state revolving fund program established by this part.

(15) "Project" means improvements or activities that are:

(a) to be undertaken for a public water system and that are of a type that will facilitate compliance with the national primary drinking water regulations applicable to the system; or

(b) to further the health protection objectives of the federal act.

(16) "Public water system" means a system for the provision to the public of water for human consumption, through pipes or other constructed conveyances, if that system has at least 15 service connections or regularly serves at least 25 individuals. The term includes any collection, treatment, storage, and distribution facilities under control of an operator of a system that are used primarily in connection with a system and any collection or pretreatment storage facilities not under control of an operator and that are used primarily in connection with a system.

(17) "Revolving fund" means the drinking water state revolving fund established by 75-6-211.

History: En. Sec. 2, Ch. 553, L. 1995; amd. Sec. 14, Ch. 538, L. 1997; amd. Sec. 23, Ch. 498, L. 1999; amd. Sec. 38, Ch. 489, L. 2009.

75-6-203. Drinking water state revolving fund program. There is a program under which the state may provide financial assistance to community water systems and nonprofit noncommunity water systems. The program must be administered in accordance with this part and the federal act.

History: En. Sec. 3, Ch. 553, L. 1995; amd. Sec. 15, Ch. 538, L. 1997.

75-6-204. Authorization of agreement — content. (1) The department may enter into a capitalization grant agreement or other agreement with the environmental protection agency

to implement the program and may accept from that agency other grants and loans to carry out the program.

(2) In entering into an agreement, the director of the department may commit the state to:

(a) accept grant payments from the environmental protection agency in accordance with the schedule established by the administrator of that agency and deposit the payments in the revolving fund established in 75-6-211;

(b) deposit in the revolving fund from state money an amount equal to at least 20% of the total amount of all capitalization grants made to the state as provided by 75-6-211 on or before the date on which each federal grant payment is made to the state;

(c) deposit in the nonproject account for department programs authorized under section 300j-12(g)(2) of the federal act (42 U.S.C. 300j-12(g)(2)) a state match equal dollar-for-dollar to the capitalization grant deposited in the account;

(d) provide financial and technical assistance to a public water system in accordance with this part in an amount equal to 120% of the amount of each grant payment within a period not to exceed 1 year after receipt of a grant;

(e) expend all funds in the revolving fund in an expeditious and timely manner;

(f) use all funds deposited in the revolving fund as a result of the capitalization grant to ensure progress, as determined by the governor, toward compliance with enforceable deadlines, goals, and requirements of the federal act;

(g) expend each grant payment in accordance with the laws and procedures applicable to commitment or expenditure of revenue of the state;

(h) use accounting, audit, and fiscal procedures conforming to generally accepted government accounting standards;

(i) make biennial reports and provide annual audits to the environmental protection agency concerning the use of the revolving fund as required by the federal act; and

(j) any other covenants, commitments, and obligations necessary to ensure that the state's administration of the program is consistent with the provisions of this part and the federal act.

(3) As a condition of making a loan or providing other financial assistance from the revolving fund, the department shall require that the public water system maintain project accounts in accordance with generally accepted government accounting standards.

History: En. Sec. 4, Ch. 553, L. 1995; amd. Sec. 16, Ch. 538, L. 1997.

75-6-205. Rulemaking authority. The department and the department of natural resources and conservation may adopt rules within their respective authorities established within the provisions of this part, including rules:

(1) prescribing the form and content of applications for loans and technical assistance;

(2) governing the application of the criteria for awarding loans and technical assistance;

(3) establishing additional terms and conditions for the making of loans and the security instruments and other necessary agreements;

(4) establishing ceilings on the amount of individual loans to be made if considered appropriate and necessary for the successful administration of the program;

(5) establishing affordability criteria to be used in awarding subsidies to disadvantaged communities;

(6) regarding other matters that may be required to ensure compliance of the program with the provisions of the federal act and rules promulgated under the federal act, unless these matters are specifically governed by this part; and

(7) to maintain the financial integrity of the program.

History: En. Sec. 5, Ch. 553, L. 1995; amd. Sec. 268, Ch. 42, L. 1997; amd. Sec. 17, Ch. 538, L. 1997.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

75-6-206 through 75-6-210 reserved.

75-6-211. Revolving fund. (1) There is established in the state treasury a separate account designated as the drinking water state revolving fund. The corpus of the fund must be available in perpetuity for providing assistance under this part. There are established within the revolving fund a federal allocation account, a state allocation account, an administration

account, an investment income account, and a debt service account. A nonproject account for the program is established in the state treasury as a separate account that is outside the revolving fund.

(2) There must be credited to:

(a) the federal allocation account:

(i) all amounts received by the state pursuant to the federal act as capitalization grants for a state revolving fund to provide loans or other assistance, as authorized under this part, to community water systems and nonprofit noncommunity water systems; and

(ii) all amounts transferred to the fund from the water pollution control state revolving fund under 75-5-1106;

(b) the state allocation account:

(i) the net proceeds of bonds of the state issued pursuant to 75-6-225, less any proceeds deposited to the administration account as provided in subsection (2)(c)(ii);

(ii) money appropriated by the legislature; and

(iii) other available qualifying funds;

(c) the administration account, an amount not to exceed 4% of the federal capitalization grant award or the maximum amount allowed by the federal act for payment of administrative costs and that may include a combination of:

(i) federal funds; and

(ii) the proceeds of bonds of the state issued pursuant to 75-6-225 as the department determines necessary and as required by the federal act for state matching funds to assist in administering the program;

(d) the investment account, all money received from investment of amounts in those accounts in the revolving fund designated by the board of examiners in the resolution or trust indenture authorizing the issuance of bonds;

(e) the debt service account, the interest portion of loan repayments; and

(f) the nonproject account for department programs authorized under section 300j-12(g)(2) of the federal act (42 U.S.C. 300j-12(g)(2)), up to 10% of the capitalization grant and the state's match as described in 75-6-204.

(3) Each loan made under this part must be funded and disbursed from the federal allocation account or the state allocation account, or both, by the department of natural resources and conservation as recommended by the department. All amounts received in payment of principal or interest on a loan must be credited to the revolving fund. If bonds have been issued pursuant to 75-6-225 and are outstanding, the interest payments must be transferred to the debt service account securing the bonds. Money in the debt service account that is not required for debt service may be transferred to other accounts within the revolving fund as provided in the resolution or trust indenture authorizing the bonds. The department may transfer payments and prepayments of the principal of loans deposited in the state allocation account to the state allocation account of the state's water pollution control revolving fund program.

(4) The department of natural resources and conservation may establish additional accounts and subaccounts within the revolving fund that it considers necessary to account for the program money and to ensure compliance with the federal act and this part.

(5) As allowed under the federal act, the governor may reserve or transfer to the state's water pollution control revolving fund up to 33% of the state's drinking water revolving fund program capitalization grant. The transfer of funds must be included in the intended use plan in 75-6-231.

History: En. Sec. 6, Ch. 553, L. 1995; amd. Sec. 269, Ch. 42, L. 1997; amd. Sec. 18, Ch. 538, L. 1997; amd. Sec. 5, Ch. 421, L. 1999.

75-6-212. Use of revolving fund. (1) Money in the revolving fund may be used to:

(a) make loans to community water systems and nonprofit noncommunity water systems as provided in this part;

(b) buy or refinance the debt obligation of a municipality at an interest rate that does not exceed market rates, provided that the obligations were incurred and construction of the project began after July 1, 1993;

(c) guarantee or purchase insurance in order to enhance credit or reduce interest rates for obligations of municipalities that are issued to finance eligible projects;

(d) leverage the total amount of revolving funds available by providing a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the state, the net proceeds of which are deposited in the revolving fund;

(e) pay reasonable administrative costs of the program, not to exceed 4% of the annual capitalization grant or the maximum amount allowed under the federal act;

(f) if matched by an equal amount of state funds, pay the department's costs in an amount not to exceed 10% of the annual capitalization grant for the following:

(i) public water system supervision programs;

(ii) administering or providing technical assistance through source water protection programs;

(iii) developing and implementing a capacity development strategy under section 300g-9 of the federal act (42 U.S.C. 300g-9); and

(iv) administering an operator certification program in order to meet the requirements of section 300g-8 of the federal act (42 U.S.C. 300g-8);

(g) pay the costs in an amount not to exceed 2% of the annual capitalization grant for the purpose of providing technical assistance to public water systems serving 10,000 or fewer persons. No less than 1.5% of the annual capitalization grant must be contracted by the department to private organizations or individuals for the purposes of this subsection.

(h) reimburse the expenses, as provided for in 2-18-501 through 2-18-503 and 5-2-302, of the advisory committee established pursuant to 75-6-231 while on official committee business; and

(i) provide additional subsidization, separate and apart from loan subsidies for disadvantaged communities provided in 75-6-226, to eligible recipients in the form of forgiveness of principal of loans to the extent authorized or required by federal law and subject to satisfaction of conditions on loans provided for in 75-6-224 or to satisfy any other incentives, conditions, or requirements of federal law related to the program.

(2) Except as provided in subsection (3), money in the fund may not be used for:

(a) expenditures related to monitoring, operation, and maintenance;

(b) the acquisition of real property or any interest in real property, unless the acquisition is integral to a project authorized under this part and the purchase is from a willing seller;

(c) providing assistance to a public water system that:

(i) does not have the financial, managerial, and technical capability to ensure compliance with the requirements of the federal act; or

(ii) is in significant noncompliance with any requirement of a national primary drinking water regulation or variance; or

(d) any other activity prohibited from funding under the federal act.

(3) (a) A public water system described in subsection (2)(c) may receive assistance under this part if:

(i) the use of the assistance will ensure compliance; and

(ii) for a system that the department has determined does not have the financial, managerial, or technical capability to ensure compliance with the federal act, the owner or operator of the system agrees to undertake feasible and appropriate changes in operations, including ownership, management, accounting, rates, maintenance, consolidation, alternative water supply, or other procedures, as determined necessary by the department to ensure compliance.

(b) Prior to providing assistance to a public water system that is in significant noncompliance with any requirement of a national primary drinking water regulation or variance pursuant to the federal act, the department shall determine whether the provisions of subsection (2)(c)(i) apply to the system.

History: En. Sec. 7, Ch. 553, L. 1995; amd. Sec. 19, Ch. 538, L. 1997; amd. Sec. 2, Ch. 297, L. 2011.

75-6-213. Repealed. Sec. 27, Ch. 538, L. 1997.

History: En. Sec. 8, Ch. 553, L. 1995.

75-6-214. Use of funds — statutory appropriation. Money in the revolving fund is statutorily appropriated, as provided in 17-7-502, for the purposes of providing financial assistance to public water systems.

History: En. Sec. 9, Ch. 553, L. 1995; amd. Sec. 54, Ch. 422, L. 1997.

75-6-215. Repealed. Sec. 27, Ch. 538, L. 1997.
History: En. Sec. 10, Ch. 553, L. 1995.

75-6-216 through 75-6-220 reserved.

75-6-221. General loan and assistance program. (1) The program may, subject to the requirements in 75-6-222 through 75-6-224, make loans to community water systems and nonprofit noncommunity water systems that:

(a) will facilitate compliance with national primary drinking water regulations pursuant to the federal act; or

(b) will further the health protection objectives of the federal act, including but not limited to projects that involve:

(i) upgrading and replacing infrastructure;

(ii) addressing exceedances of the federal act or preventing future violations;

(iii) consolidating water supplies;

(iv) the acquisition of land, at fair market value, that is integral to the project;

(v) planning and designing of a project; or

(vi) other activities allowed under the federal act.

(2) In addition to loans authorized under subsection (1), the program may make loans to public water systems for one or more of the following purposes:

(a) to a community water system or nonprofit noncommunity water system to acquire land or a conservation easement from a willing party if the land is necessary to ensure compliance with the national primary drinking water regulations or to protect the source of water from contamination;

(b) to a community water system to implement local, voluntary source water protection measures in order to protect source water in areas delineated under a source water assessment program in order to facilitate compliance with the national primary drinking water regulations or otherwise significantly further the health protection objectives of the federal act;

(c) to a community water system to provide funding for the development and implementation of a source water quality assessment, contingency plans, and demonstration projects for partners within a delineated source water area.

(3) The department may:

(a) provide financial and technical assistance to any public water system as part of a capacity development strategy developed and implemented in accordance with the federal act;

(b) make expenditures from the capitalization grant to delineate and assess source water protection areas, provided that funds set aside for such expenditures must be obligated within 4 fiscal years; and

(c) make expenditures from the fund for the establishment and implementation of wellhead protection programs.

(4) The program may provide financial assistance to a public water system according to priorities established by the department in the department's intended use plan adopted pursuant to 75-6-231. Prior to making a loan to a public water system, the department of natural resources and conservation shall determine that the system has the ability to repay the loan according to its terms and conditions and may require a dedicated source of repayment and impose additional requirements.

(5) The total amount of assistance provided and expenditures made by the program under subsections (2) and (3) may not exceed 15% of the amount of the capitalization grant received by the department for that year and may not exceed 10% of that amount for any one of the activities listed under subsection (2) or (3).

History: En. Sec. 11, Ch. 553, L. 1995; amd. Sec. 23, Ch. 538, L. 1997.

75-6-222. Evaluation of projects and loan applications. The department and the department of natural resources and conservation shall evaluate projects and loan applications. In evaluating projects and applications, the following factors must be considered:

(1) the technical design of the project to ensure compliance with all applicable statutes, rules, and design standards;

(2) the financial capacity of the applicant;

(3) the financial, managerial, and technical ability of the applicant to properly operate and maintain the project;

(4) the total financing of the project to ensure completion;

(5) the viability of the public water system;

(6) the ability of the public water system to pay the costs of the project without the requested financial assistance;

(7) the total amount of loan funds available for financial assistance in the revolving fund;

(8) the total amount requested by other applications that have been received or that are likely to be received;

(9) the ranking of the project on the priority list in the intended use plan; and

(10) any other criteria that the department determines to be appropriate, considering the purposes of the program and the federal act.

History: En. Sec. 12, Ch. 553, L. 1995; amd. Sec. 24, Ch. 538, L. 1997.

75-6-223. Applications for loans. (1) The department shall, after consultation with the department of natural resources and conservation, establish loan application procedures, including forms for the applications. Each application for a loan must include:

(a) a reasonably detailed description of the project;

(b) a reasonably detailed estimate of the cost of the project;

(c) a timetable for the construction of the project and for payment of the cost of the project;

(d) identification of the source or sources of funds to be used in addition to the proceeds of the loan to pay the cost of the project;

(e) the source or sources of revenue proposed to be used to repay the loan;

(f) a current financial statement of the system showing assets, liabilities, revenue, and expenses;

(g) a statement as to whether, at the time of application, there are any outstanding loans, notes, bonds, or other obligations payable from the revenue of the public water system and, if so, a description of the loans, notes, bonds, or other obligations;

(h) if the applicant is a private person, a statement as to whether, at the time of the application, there are any outstanding loans, notes, or other obligations of the private person and, if so, a description of the loans, notes, or other obligations; and

(i) any other information that the department or the department of natural resources and conservation may require to determine the feasibility of a project and the applicant's ability to repay the loan, including but not limited to:

(i) engineering reports;

(ii) economic feasibility studies; and

(iii) legal opinions.

(2) Each application for a loan subsidy must include:

(a) a reasonably detailed description of the project;

(b) a reasonably detailed estimate of the cost of the project;

(c) a timetable for the construction of the project and for payment of the cost of the project;

(d) identification of the source or sources of funds to be used in addition to the proceeds of the loan to pay the cost of the project;

(e) a statement as to whether, at the time of application, there are any outstanding loans, notes, bonds, or other obligations payable from the revenue of the public water system and, if so, a description of the loans, notes, bonds, or other obligations;

(f) an explanation, including supporting information, as to why a loan subsidy is requested;

(g) evidence that the applicant qualifies as a disadvantaged community; and

(h) any other information that the department or the department of natural resources and conservation may require.

History: En. Sec. 13, Ch. 553, L. 1995; amd. Sec. 25, Ch. 538, L. 1997.

75-6-224. Loan conditions. (1) Upon approval of an application by the department, the department of natural resources and conservation may lend amounts on deposit in the revolving fund to a public water system to pay part or all of the cost of a project. The loan is subject to the applicant complying with the following conditions:

(a) meeting requirements of financial capability set by the department of natural resources and conservation to ensure sufficient revenue to operate and maintain the project for its useful life and to repay the loan, including the establishment of a dedicated source of revenue and the establishment and maintenance by the applicant of a reserve or revolving fund to secure the payment of principal of and interest on the loan to the extent permitted by the applicable law governing the public water system or the applicant's financial authority;

(b) in the case of a system owned by a private person, in addition to establishing a dedicated source of revenue, which may include the pledge of accounts receivable, providing, as required by the department of natural resources and conservation, credit enhancements, a pledge of collateral, or other types of security, such as a corporate or personal guarantee;

(c) agreeing to operate and maintain the project properly over its structural and material design life, which may not be less than the term of the loan;

(d) agreeing to maintain proper financial records in accordance with generally accepted accounting standards and agreeing that all records are subject to audit;

(e) meeting the requirements listed in the federal act for projects constructed with funds directly made available by federal capitalization grants;

(f) providing legal assurance that all necessary property titles, easements, and rights-of-way have been obtained to construct, operate, and maintain the project;

(g) submitting an engineering report evaluating the proposed project, including information demonstrating its cost-effectiveness and environmental information necessary for the department and the department of natural resources and conservation to fulfill their responsibilities under the Montana Environmental Policy Act and rules adopted to implement that act;

(h) complying with plan, specification, and other requirements for public water systems established by the department;

(i) providing for proper construction inspection and project management; and

(j) meeting requirements of financial, managerial, and technical capability to maintain compliance with the federal act.

(2) Each loan, unless prepaid, is payable subject to the limitations of the federal act, with interest paid in annual or more frequent installments.

(3) (a) Subject to the limitations of the federal act, the interest rate on a loan must ensure that the interest payments on the loan and on other outstanding loans will be sufficient, if timely paid in full, with other available funds in the revolving fund, including investment income, to enable the state to pay the principal of and interest on the bonds issued pursuant to 75-6-225.

(b) The interest rate may include any additional rate that the department of natural resources and conservation considers reasonable or necessary to provide a reserve for the repayment of the loans. The additional rate may be fixed or variable, may be calculated according to a formula, and may differ from the rate established for any other loan. Once the reserve has been established at a level considered by the department to be reasonable and prudent for the amount of the loans outstanding, the department may use excess reserve payments to make grants to aid in the feasibility of projects.

(4) Each loan must be evidenced by a bond, note, or other evidence of indebtedness of the borrower, in a form prescribed or approved by the department of natural resources and conservation, except that the bond, note, or other evidence must include provisions required by the federal act and must be consistent with the provisions of this part. The bond, note, or other evidence is not required to be identical for all loans.

(5) As a condition to making a loan, the department of natural resources and conservation, with the concurrence of the department, may impose a reasonable administrative fee that may be paid from the proceeds of the loan or other available funds of the municipality or private person. Administrative fees may be deposited:

(a) in a special administrative costs account that the department of natural resources and conservation may create for that purpose outside the revolving fund provided for in 75-6-211; or

(b) in the administrative account provided for in 75-6-211. In determining into which account the administrative fees are deposited, the department shall take into consideration the needs and requirements of the programs. Money deposited in the special administrative costs

account or the administration account must be used for the payment of administrative costs of the program.

History: En. Sec. 14, Ch. 553, L. 1995; amd. Sec. 26, Ch. 538, L. 1997; amd. Sec. 6, Ch. 421, L. 1999; amd. Sec. 2, Ch. 72, L. 2015.

75-6-225. Authorization of bonds — allocation of proceeds. (1) The board of examiners is authorized, upon request of the department of natural resources and conservation, to issue and sell bonds of the state as authorized by the legislature to provide money for the program. The bonds are general obligations on which the full faith, credit, and taxing powers of the state are pledged for payment of the principal and interest. The bonds must be issued as provided by Title 17, chapter 5, part 8.

(2) (a) Except as otherwise provided in this subsection (2), the proceeds of the bonds are allocated to the state allocation account or the administration account of the revolving fund, as provided in 75-6-211.

(b) Any accrued interest and bond proceeds to be used to pay interest must be deposited in the debt service account of the revolving fund.

(c) Proceeds of bonds to be used to pay the costs of issuing the bonds must be deposited in a cost of issuance account established outside of the revolving fund by the board of examiners in the resolution or trust indenture authorizing the issuance of the bonds.

(d) Any premium received must be deposited in the state allocation account, the debt service account, or the cost of issuance account as directed by the board of examiners in the resolution or trust indenture regarding the bonds.

(e) For purposes of 17-5-803 and 17-5-804, the state allocation account and the cost of issuance account constitute a capital projects account. The proceeds must be available to the department and the department of natural resources and conservation and may be used for the purposes authorized in this part without further budgetary authorization.

(3) In the resolution authorizing the sale and issuance of the bonds, the board of examiners, upon the request of the department of natural resources and conservation, may create separate accounts or subaccounts to provide for the payment security of the bonds and may pledge the revolving fund and the interest component of the loan repayments credited to the revolving fund as security for the bonds.

(4) (a) The board of examiners may allow bonds issued under this section to be secured by a trust indenture between the board of examiners and a trustee. The trustee may be a trust company or bank having the power of a trustee inside or outside the state.

(b) If the board of examiners elects to issue bonds pursuant to a trust indenture, the trustee may, as determined by the board of examiners, hold one or more of the funds and accounts created pursuant to this chapter.

(c) In addition to provisions that the board of examiners determines to be necessary and appropriate to secure the bonds, to provide for the rights of the bondholders, and to ensure compliance with all applicable law, the trust indenture must contain provisions that:

(i) govern the custody, safeguarding, and disbursement of all money held by the trustee under the trust indenture; and

(ii) permit representatives of the state treasurer, department, or department of natural resources and conservation, upon reasonable notice and at reasonable times, to inspect the trustee's books and records concerning the trust indenture.

(d) A trust indenture or an executed counterpart of a trust indenture developed pursuant to this chapter must be filed with the secretary of state.

History: En. Sec. 15, Ch. 553, L. 1995; amd. Sec. 7, Ch. 421, L. 1999; amd. Sec. 4, Ch. 74, L. 2015.

Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.

75-6-226. Loan subsidy for disadvantaged communities. (1) Notwithstanding any other provision in this part, if the program makes a loan pursuant to 75-6-221(1) to a disadvantaged community or to a community that the department expects to become a disadvantaged community as a result of a proposed project, the department may provide additional subsidization in the form of a reduced interest rate, the forgiveness of principal, or a combination of both.

(2) The total annual amount of loan subsidies made by the department pursuant to subsection (1) may not exceed 30% of the capitalization grant received by the department for each fiscal year.

History: En. Sec. 20, Ch. 538, L. 1997; amd. Sec. 3, Ch. 323, L. 2005; amd. Sec. 39, Ch. 489, L. 2009.

75-6-227. Creation of debt. The legislature, through enactment of this section, authorizes the creation of state debt in an amount not to exceed $50 million in principal amount of general obligation bonds outstanding from time to time for the purpose of:

(1) funding the drinking water program; and

(2) funding portions of loans on an interim basis pending receipt of:

(a) grant payments from the environmental protection agency for which federal legislation appropriating the proceeds of the grants has been enacted; or

(b) other revenue for the program.

History: En. Sec. 16, Ch. 553, L. 1995; amd. Sec. 4, Ch. 421, L. 1999; amd. Sec. 2, Ch. 18, L. 2003; amd. Sec. 4, Ch. 323, L. 2005; amd. Sec. 3, Ch. 29, L. 2021.

75-6-228 through 75-6-230 reserved.

75-6-231. Intended use plan — advisory committee. (1) The department shall prepare an annual intended use plan for the state that meets the requirements of section 300j-12(b) of the federal act, 42 U.S.C. 300j-12(b).

(2) The intended use plan must include:

(a) a list of projects in the state that are eligible for assistance, including both the priority assigned to each project based on public health needs and on the financial needs of the project and, to the extent known, the expected funding schedule for each project; and

(b) a description of the funds to be allocated to activities under 75-6-212 and 75-6-221(2) and funds to be transferred to or received by the water pollution control state revolving fund, as allowed in 75-6-211(5), for the annual fiscal period following publication of the intended use plan.

(3) Before finalizing an intended use plan, the department shall prepare a draft document containing the information required in subsection (2) and shall provide public notice and opportunity to comment on the draft document.

(4) (a) Following the public comment period provided for in subsection (3) and any department modifications to the intended use plan resulting from the public comment, a summary of the public comment and the intended use plan must be presented for review, comment, and recommendations to an advisory committee formed by the department and consisting of six individuals from the following entities appointed by their respective presiding officers, directors, or executive officials:

(i) one member from the Montana league of cities and towns;

(ii) one member from the Montana association of counties;

(iii) one member from the department of natural resources and conservation;

(iv) one member from the department of environmental quality; and

(v) two members from the legislature. One member must be from the house of representatives and one from the senate, and subject to 5-5-234, one must be from the majority party and one must be from the minority party.

(b) The advisory committee is attached to the department for administrative purposes only.

(5) The department shall address in writing any comments and recommendations provided by the advisory committee provided for in subsection (4) before finalizing an intended use plan and prior to awarding any contracts under 75-6-212(1)(g).

History: En. Sec. 21, Ch. 538, L. 1997; amd. Sec. 1, Ch. 90, L. 2003; amd. Sec. 19, Ch. 4, Sp. L. May 2007.

Cross-References

Allocation for administrative purposes, 2-15-121.

75-6-232. Insurance and guarantee program. (1) The revolving fund may be used to purchase insurance for or guarantee the timely payment of principal and interest on a debt obligation issued by a municipality if the department of natural resources and conservation determines that the guarantee or insurance would improve the credit market access of the municipality or reduce the interest rate on the municipal obligation.

(2) The department of natural resources and conservation shall adopt rules setting forth the conditions under which the program will guarantee or insure municipal obligations, including the amount of fees to be charged for the guarantee or the purchase of insurance and the amount of reserves, if any, to be established in the fund to cover any guarantee. The program may not be used to guarantee a municipal obligation for a project or municipality not meeting the requirements of 75-6-224, except to the extent that they are inconsistent with the guarantee.

History: En. Sec. 22, Ch. 538, L. 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

75-6-233 through 75-6-235 reserved.

75-6-236. Projects funded by federal government appropriations. For projects that are funded in part by appropriations from the federal government over a term of years, that have been approved by the department and the department of natural resources and conservation under 75-6-222, and that are considered to be in compliance with 75-6-224, the department of natural resources and conservation may advance money to a public water system in anticipation of the receipt of federal funds by the public water system on the following conditions:

(1) congress has authorized the project and has committed to fund the project at a specified dollar amount over a period of years;

(2) other funding agencies will not authorize construction of the project to begin until there is evidence that construction money will be available to the public water system to pay all of the construction costs;

(3) the department and the department of natural resources and conservation determine that it is in the best interest of the state and the state's objectives under the program that the project begin construction prior to the receipt of all federal appropriations; and

(4) the advance of the money will be in the form of a note that is issued pursuant to 7-7-109 in anticipation of a federal grant for which the public water system promises to pay and pledges to the department of natural resources and conservation the proceeds of the grant when received.

History: En. Sec. 2, Ch. 9, L. 2001.

Part 3
Regional Water and Wastewater Authority Act

Part Cross-References

Interlocal agreements, Title 7, ch. 11, part 1.

75-6-301. Short title. This part may be cited as the "Regional Water and Wastewater Authority Act".

History: En. Sec. 1, Ch. 498, L. 1999.

75-6-302. Purpose. (1) It is the purpose of this part to permit certain public agencies to make the most efficient use of their powers relating to public water supplies and the transportation and treatment of wastewater by enabling them to cooperate with other public agencies on a basis of mutual advantage and to provide services and facilities to participating public agencies. It is also the purpose of this part to provide for the establishment of a public body, corporate and politic, that is known as a regional water authority or, when appropriate, a regional wastewater authority or regional water and wastewater authority. The function of the regional water authority is to secure a source of water on a scale larger than is feasible for individual public agencies acting alone and to sell the water to public service districts, municipalities, publicly and privately owned water utilities, and others. The function of the regional wastewater authority is to enable public agencies to join together to provide the most economical method of transportation and treatment of wastewater and to provide the transportation and treatment services to public service districts, municipalities, publicly and privately owned wastewater utilities, and others. The function of the regional water and wastewater authority is to enable public agencies to join together to carry out the joint functions of both a regional water authority and a regional wastewater authority.

(2) In addition to the purposes for which it may have originally been created, any authority created pursuant to this part may enter into agreements with public agencies, privately owned utilities, and other authorities for the provision of related services, including but not limited to the following:

(a) administration;

(b) operation and maintenance; and

(c) billing and collection.

History: En. Sec. 2, Ch. 498, L. 1999.

75-6-303. Liberal construction. The provisions of this part are necessary for the public health, safety, and welfare and must be liberally construed to effectuate the purposes of this part.

History: En. Sec. 20, Ch. 498, L. 1999.

75-6-304. Definitions. For the purposes of this part, the following definitions apply:

(1) "Authority" means any regional water authority, regional wastewater authority, or regional water and wastewater authority organized pursuant to the provisions of this part.

(2) "District customer" means a county water and/or sewer district that is afforded the use or the availability of service from an authority.

(3) "Municipal customer" means a municipality that is afforded the use or the availability of service from an authority.

(4) "Public agency" means any municipality, county, water and sewer district, or other political subdivision of this state.

(5) "Rural customer" means a customer who is afforded the use or the availability of service from an authority and is neither a district customer nor a municipal customer.

History: En. Sec. 3, Ch. 498, L. 1999; amd. Sec. 5, Ch. 187, L. 2013.

Cross-References

County water and/or sewer districts, Title 7, ch. 13, part 22.

75-6-305. Joint exercise of powers by certain public agencies — agreements among agencies — filing of agreement — prohibition against competition — retirement of bonds — consent of public agency. (1) Any powers, privileges, or authority of a public agency of this state relating to public water supplies or the transportation or treatment of wastewater may be exercised jointly with any other public agency of this state or with any agency of the United States to the extent that the laws of the United States permit. An agency of the state government when acting jointly with any public or private agency may exercise all of the powers, privileges, and authority conferred by this part upon a public agency.

(2) A public agency may enter into agreements with one or more other public agencies for the purpose of organizing an authority. Appropriate action by ordinance, resolution, or otherwise pursuant to law of the governing bodies of the participating public agencies is necessary before any agreement may take effect.

(3) An agreement must specify the following:

(a) its duration;

(b) the precise organization, composition, and nature of the authority created, together with the powers delegated to the authority;

(c) its purpose or purposes;

(d) the manner of financing for the authority and of establishing and maintaining a budget for the authority;

(e) the permissible methods for partial or complete termination of the agreement and for disposing of property upon partial or complete termination;

(f) the manner of acquiring, holding, and disposing of real and personal property of the authority; and

(g) any other necessary and proper matters.

(4) An agreement may be amended to include additional public agencies by consent of two-thirds of the signatories to the agreement, if the terms of the agreement are not changed. Otherwise, a new agreement with the new public agency must be made. When only two public agencies form an authority, both parties shall consent to the amendment of the agreement to include additional public agencies.

(5) Prior to taking effect, an agreement made under this part must be filed with the clerk of the county commission of each county in which a member of the authority is located and the agreement then must also be filed with the secretary of state, accompanied by a certificate from the clerk of the county commission of the county or counties where filed, stating that the agreement has been filed in that county.

(6) A public agency that enters into an agreement made under this part may not offer or provide water or wastewater services in competition with another public agency entering into the agreement.

(7) A public agency that enters into an agreement made under this part may not withdraw from the agreement until the outstanding bonded indebtedness of the authority is retired or the bondholders are otherwise protected.

(8) (a) An authority may not provide water or wastewater services to end users located within the jurisdiction of a public agency that owns or operates a community water system or a public sewage system, as those terms are defined in 75-6-102, without the consent of the governing body of the public agency through the adoption of a resolution or ordinance.

(b) The governing body may not adopt a resolution or ordinance without first holding a public hearing. The hearing must address relevant factors relating to the provision of the water or wastewater services, including but not limited to the scope of the proposed service, rates and charges, the indebtedness of the public agency and the authority, and the rights and obligations of the persons or entities to be served. Notice must be given as provided in 7-1-2121 or 7-1-4127.

(c) For purposes of this subsection (8), "governing body" means the council, commission, board of directors, or other legislative body charged with governing the public agency.

History: En. Sec. 4, Ch. 498, L. 1999; amd. Sec. 5, Ch. 13, L. 2011.

75-6-306. Furnishing of funds, personnel, or services by certain public agencies — agreements for purchase, sale, distribution, transmission, transportation, and treatment of water or wastewater — terms and conditions. A public agency entering into an agreement pursuant to this part may appropriate funds and may sell, lease, give, or otherwise supply to the authority personnel or services for the operation of the authority as may be within its legal power to furnish. A public agency, whether or not a party to an agreement pursuant to this part, and a publicly or privately owned water distribution company may enter into contracts with an authority, created pursuant to this part, for the purchase of water from the authority or the sale of water to the authority, for the treatment of water by either party, and for the distribution or transmission of water by either party. The authority may enter into the contracts. A public agency, whether or not a party to an agreement pursuant to this part, and a publicly or privately owned wastewater transportation or treatment system may enter into contracts with an authority, created pursuant to this part, for the transportation and treatment of wastewater by either party. The authority may enter into the contracts, subject to the prior approval of the public service commission, if the privately owned wastewater transportation or treatment system is subject to the jurisdiction of the public service commission. However, if the public service commission has not acted on a proposed contract within 90 days of its filing, approval is considered to have been granted. A contract may include an agreement for the purchase of water not actually received or the treatment of wastewater not actually treated. A contract may not be for a period in excess of 40 years, but renewal options may be included in the contract. The obligations of a public agency under a contract must be payable solely from the revenue produced from the public agency's water or wastewater system, and the public service commission, in the case of a water system whose rates are subject to its jurisdiction, shall permit the water system to recover through its rates revenue sufficient to meet its obligations under the agreement.

History: En. Sec. 5, Ch. 498, L. 1999.

75-6-307 through 75-6-309 reserved.

75-6-310. Declaration of authority organization — when public body, corporate and politic. Upon filing with the secretary of state, the secretary of state shall declare the authority organized and give it the corporate name of regional water authority number ...., regional wastewater authority number ...., or regional water and wastewater authority number ...., as appropriate. Upon assignment of the designation, the authority is a public body, corporate and politic.

History: En. Sec. 6, Ch. 498, L. 1999.

75-6-311. Governing body — appointments — terms of members — voting rights. (1) The governing body of the authority shall consist of not less than three persons selected by the participating public agencies. Each participating public agency shall appoint at least one member. Each member's full term may not be less than 1 year or more than 4 years, and initial terms must be staggered in accordance with procedures set forth in the agreement provided for in 75-6-305 and amendments to the agreement. In the case of an authority that is made up by the agreement of two public agencies, each public agency shall appoint two representatives to the governing body.

(2) The manner of selection of the governing body and terms of office must be set forth in the agreement provided for in 75-6-305 and amendments to the agreement. The governing body of the authority shall elect one of its members as president, one as treasurer, and one as secretary.

(3) Each member has one vote in any matter that comes before the authority for decision. However, the member agencies shall, in the original agreement establishing the authority, set forth any special weighing of votes based upon population served, volumes of water purchased, volumes of wastewater treated, numbers of customers, or some other criterion that the authority considers appropriate for maintaining fairness in the decisions and operations of the authority.

History: En. Sec. 7, Ch. 498, L. 1999.

75-6-312. Meetings of governing body — annual audit. The governing body of the authority shall meet as often as the needs of the authority require, but not less frequently than on a quarterly basis. The authority is subject to the provisions of Title 2, chapter 3, regarding open meeting laws and public participation. The governing body shall cause an annual audit of the financial records of the authority to be made. The cost of the audit must be paid by the authority. The authority is considered a local government entity for purposes of Title 2, chapter 7, part 5, and audits must comply with the provisions of that part.

History: En. Sec. 8, Ch. 498, L. 1999.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

75-6-313. Powers of governing body. (1) For the purpose of providing a water supply, transportation facilities, or treatment system to the participating public agencies and others, the governing body of the authority has the powers, authorities, and privileges provided for in this section.

(2) The governing body may accept by gift or grant from any person, firm, corporation, trust, or foundation, from this state or any other state or any political subdivision or municipality of this or any other state, or from the United States any funds or property or any interest in funds or property for the uses and purposes of the authority. The governing body may hold title to the funds or property in trust or otherwise and may bind the authority to apply the funds or property according to the terms of the gift or grant.

(3) The governing body may sue and be sued.

(4) The governing body may enter into franchises, contracts, and agreements with this or any other state, the United States, any municipality, political subdivision, or authority of a political subdivision, or any of their agencies or instrumentalities; any Indian tribe; or any public or private person, partnership, association, or corporation of this state or of any other state or the United States. This state and any municipality, political subdivision, or authority of a political subdivision or any of their agencies or instrumentalities and any public or private person, partnership, association, or corporation may enter into contracts and agreements with the authority for any term not exceeding 40 years for the planning, development, construction, acquisition, maintenance, or operation of a facility or for any service rendered to, for, or by the authority. However, the authority is subject to the same statutory requirements for competitive bidding and procurement contracts as would be applicable to any member public agency.

(5) The governing body may borrow money and evidence the borrowing by warrants, notes, or bonds provided for in this part and may refund the indebtedness by the issuance of refunding obligations.

(6) The governing body may acquire land and interests in land by gift, purchase, exchange, or eminent domain. The power of eminent domain may be exercised within or outside of the boundaries of the authority in accordance with the provisions of Title 70, chapter 30.

(7) The governing body may acquire by purchase or lease, construct, install, and operate reservoirs, pipelines, wells, check dams, pumping stations, water purification plants, and other facilities for the production, distribution, and use of water and transportation facilities, pump stations, lift stations, treatment facilities, and other facilities necessary for the transportation and treatment of wastewater and may own and hold real and personal property that may be necessary to carry out the purposes of its organization.

(8) The governing body has the general management, control, and supervision of all the business, affairs, property, and facilities of the authority and of the construction, installation, operation, and maintenance of authority improvements. The governing body may establish regulations relating to authority improvements.

(9) The governing body may hire and retain agents, employees, engineers, and attorneys and determine their compensation. The governing body shall select and appoint a general manager of the authority who shall serve at the pleasure of the governing body. The general manager must have training and experience in the supervision and administration of the system or systems operated by the authority and shall manage and control the system under the general supervision of the governing body. All employees, servants, and agents of the authority must be under the immediate control and management of the general manager. The general manager shall perform all other duties that may be prescribed by the governing body and shall give the governing body a good and sufficient surety company bond in a sum to be set and approved by the governing body, conditioned upon the satisfactory performance of the general manager's duties. The governing body may also require that any other employees be bonded in an amount that it shall determine. The cost of a bond must be paid out of the funds of the authority.

(10) The governing body may adopt and amend rules and regulations not in conflict with the constitution and laws of this state, necessary for carrying on the business, objects, and affairs of the governing body and of the authority.

(11) The governing body has and may exercise all rights and powers necessary or incidental to or implied from the specific powers granted in this section. Specific powers may not be considered as a limitation upon any power necessary or appropriate to carry out the purposes of this part.

History: En. Sec. 9, Ch. 498, L. 1999.

75-6-314 through 75-6-319 reserved.

75-6-320. Revenue bonds. For constructing or acquiring any water supply, wastewater transportation, or treatment system for the authorized purposes of the authority or as necessary or incidental to the authorized purposes, for constructing improvements and extensions to improvements, and for reimbursing or paying the costs and expenses of creating the authority, the governing body of an authority may borrow money from time to time and in evidence of the borrowing issue revenue bonds of the authority. The revenue bonds are a lien on the revenue produced from the operation of the authority's system, but may not be general obligations of the public agencies participating in the agreement. All revenue bonds issued under this part must be signed by the president of the governing body of the authority and attested by the secretary of the governing body of the authority. The bonds must contain recitals stating the authority under which the bonds are issued, that they are to be paid by the authority from the net revenue derived from the operation of the authority's system and not from any other fund or source, and that the bonds are negotiable and payable solely from the revenue derived from the operation of the system under control of the authority. However, in the case of a regional water and wastewater authority, the statutory lien created by this section is a lien only on the revenue of that service funded by the proceeds of the sale of the bonds, it being understood that the combined authority shall maintain separate books and records for its water and wastewater operations. The bonds may be issued in one or more series, may bear a date or dates, may mature at a time or times not exceeding 40 years from their respective dates, may bear interest at a rate not exceeding 2% above the interest rate on treasury notes, bills, or bonds of the same term as the term of the bond or bonds the week of closing on the bond or bonds as reported by the treasury of the United States, may be payable at the times, may be in the form, may carry registration privileges, may be executed in the manner, may be payable at a place or places, may be subject to terms of redemption with or without premium, may be declared or become due before the maturity date,

may be authenticated in any manner and upon compliance with the conditions, and may contain terms and covenants that may be provided by resolution or resolutions of the governing body of the authority. Notwithstanding the form or tenor of the bonds, and in the absence of any express recital on the face of the bonds, that the bonds are nonnegotiable, all bonds must be, and must be treated as, negotiable instruments for all purposes. Bonds bearing the signatures of officers in office on the date of the signing of the bonds must be valid and binding for all purposes, notwithstanding that before the delivery of the bonds, any of the persons whose signatures appear on the bonds ceased to be officers. Notwithstanding the requirements or provisions of any other law, bonds may be negotiated or sold in the manner and at the time or times that are found by the governing body to be most advantageous, and all bonds may be sold at the price that the interest cost of the proceeds from the bonds does not exceed 3% above the interest rate on treasury notes, bills, or bonds of the same term as the term of the bond or bonds the week of closing on the bond or bonds as reported by the treasury of the United States, based on the average maturity of the bonds and computed according to standard tables of bond values. Any resolution or resolutions providing for the issuance of the bonds may contain covenants and restrictions upon the issuance of additional bonds that are considered necessary or advisable for the assurance of the payment of the bonds authorized by the resolutions.

History: En. Sec. 10, Ch. 498, L. 1999.

75-6-321. Items included in cost of properties. The cost of any water supply, wastewater transportation, or treatment system acquired or constructed under the provisions of this part must be considered to include the cost of the acquisition or construction of the supply or system and the cost of all property rights, easements, and franchises considered necessary or convenient for the supply or system and for the improvements and extensions to the supply or system. Costs also include interest on bonds prior to and during construction or acquisition and for 6 months after completion of construction or of acquisition of the improvements and extensions; engineering expenses; fiscal agent and legal expenses; expenses for estimates of cost and of revenue; expenses for plans, specifications, and surveys; other expenses necessary or incidental to determining the feasibility or practicability of the enterprise; administrative expense; and other expenses that may be necessary or incidental to the financing authorized in this part, the construction or acquisition of the properties, the placing of the properties in operation, and the performance of the things required or permitted, in connection with any property.

History: En. Sec. 11, Ch. 498, L. 1999.

75-6-322. Trust indenture. In the discretion and at the option of the governing body of the authority, bonds may be secured by a trust indenture by and between the authority and a corporate trustee, which may be a trust company or bank that has the powers of a trust company within or outside of the state. However, a trust indenture may not convey, mortgage, or create a lien upon the water supply, wastewater transportation, or treatment system, any part of the system, or the authority or its member public agencies. The resolution authorizing the bonds and fixing the details of the bonds may provide that the trust indenture may contain provisions for protecting and enforcing the rights and remedies of bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority and the members of its governing body and officers in relation to the construction or acquisition of the water supply, wastewater transportation, or treatment system and the improvement, extension, operation, repair, maintenance, and insurance of the bonds and the custody, safeguarding, and application of all money. The resolution may also provide that all or any part of the construction work must be contracted for, constructed, and paid for under the supervision and approval of consulting engineers employed or designated by the governing body and satisfactory to the original bond purchasers, their successors, assignees, or nominees, who may be given the right to require that the security given by contractors and by any depository of the proceeds of bonds or revenue of the water supply, wastewater transportation, or treatment system or other money pertaining to the supply or system be satisfactory to the purchasers, their successors, assignees, or nominees. The indenture may set forth the rights and remedies of the bondholders and the trustee.

History: En. Sec. 12, Ch. 498, L. 1999.

75-6-323. Sinking fund for revenue bonds. At or before the time of the issuance of any bonds under this part, the governing body of the authority shall by resolution or in the trust indenture provide for the creation of a sinking fund and for monthly payments into the sinking fund from the revenue of the water supply, wastewater transportation, or treatment system operated by the authority sums in excess of the cost of maintenance and operation of the properties that will be sufficient to pay the accruing interest and retire the bonds at or before the time that each will respectively become due and to establish and maintain reserves for the bonds. All sums that are or should be, in accordance with the provisions, paid into the sinking fund must be used solely for payment of interest and for the retirement of the bonds at or prior to maturity, as may be provided or required by the resolutions.

History: En. Sec. 13, Ch. 498, L. 1999.

75-6-324. Collection of revenue and enforcement of covenants — default — suit to compel performance — appointment and powers of receiver. The governing body of an authority may insert enforceable provisions in a resolution authorizing the issuance of bonds relating to the collection, custody, and application of revenue of the authority from the operation of the water supply, wastewater transportation, or treatment system under its control and relating to the enforcement of the covenants and undertakings of the authority. If there is a default in the sinking fund provisions provided for in 75-6-323 or in the payment of the principal or interest on any of the bonds or if the authority or its governing body or any of its officers, agents, or employees fail or refuse to comply with the provisions of this part or default in any covenant or agreement made with respect to the issuance of the bonds or offered as security for the bonds, then any holder or holders of the bonds and any trustee under the trust indenture, if there is one, has the right by suit, action, mandamus, or other proceeding instituted in the district court in any of the counties in which the authority operates or in any other court of competent jurisdiction to enforce and compel performance of all duties required by this part or undertaken by the authority in connection with the issuance of the bonds. Upon application by any holder or holders of the bonds or the trustee of the trust indenture, the court shall, upon proof of the defaults, appoint a receiver for the affairs of the authority and its property. The receiver shall directly, or through its agents and attorneys, enter and take possession of the affairs of the authority. The receiver may hold, use, operate, manage, and control the authority and, in the name of the authority, exercise all of the rights and powers of the authority as considered expedient. The receiver may collect and receive all revenue and apply the revenue in the manner that the court shall direct. Whenever the default causing the appointment of the receiver has been cleared and fully discharged and all other defaults have been cured, the court, after notice and hearing as it considers reasonable and proper, may direct the receiver to surrender possession of the affairs of the authority to its governing body. The receiver may not sell, assign, mortgage, or otherwise dispose of any assets of the authority except as provided in this section.

History: En. Sec. 14, Ch. 498, L. 1999.

Cross-References

Injunctions, Title 27, ch. 19.

Mandamus, Title 27, ch. 26.

75-6-325. Statutory mortgage lien. There is a statutory mortgage lien upon the water supply, wastewater transportation, or treatment system of the authority. The lien exists in favor of the holders of bonds authorized to be issued pursuant to this part, and each holder and the system remain subject to the statutory mortgage lien until payment in full of all principal of and interest on the bonds.

History: En. Sec. 15, Ch. 498, L. 1999.

75-6-326. Rates, fees, and charges — establishment and changes. (1) (a) The governing body shall by appropriate resolution make provisions for the payment of bonds issued pursuant to this part by taxing rates, fees, and charges, for the use of all services rendered by the authority.

(b) The governing body of the authority shall review at least annually the rates, fees, and charges for services, facilities, and benefits directly afforded by the facilities, taking into account services provided and direct benefits received.

(c) The rates, fees, and charges, in addition to grants or any other revenue, must be sufficient to:

(i) pay the costs of operation, improvement, and maintenance of the authority's water supply or wastewater transportation or treatment system;

(ii) provide an adequate depreciation fund;

(iii) provide an adequate sinking fund to retire any bonds and pay interest on the bonds when due;

(iv) create reasonable reserves for the enumerated purposes; and

(v) allow for miscellaneous and emergency or unforeseen expenses.

(2) The resolution of the governing body authorizing the issuance of revenue bonds may include agreements, covenants, or restrictions considered necessary or advisable by the governing body to effect the efficient operation of the system, to safeguard the interests of the holders of the revenue bonds, and to secure the payment of the bonds and the interest on the bonds.

(3) Except as provided in subsection (9), prior to adopting a resolution to establish or change rates, fees, or charges, the governing body of the authority shall hold a public hearing.

(4) Notice of the public hearing must be published as provided in 7-1-2121 in each county or counties in which customers of the authority are located. The published notice must contain:

(a) the date, time, and place of the hearing;

(b) a brief statement of the proposed action; and

(c) the address and telephone number of a person at the authority who may be contacted for information regarding the hearing.

(5) (a) The notice must be mailed to each rural customer and to the governing bodies of district customers or municipal customers at least 25 days and not more than 40 days prior to the public hearing.

(b) The mailed notice must contain an estimate of the amount that a customer would be charged under the proposed resolution.

(6) If the establishment or change in rates, fees, or charges proposed by the authority requires an increase in the rates, fees, or charges imposed by district customers or municipal customers, district customers and municipal customers shall comply with the provisions of 7-13-2275 or 69-7-111.

(7) Any interested person, corporation, governmental body, or company may be present, be represented by counsel, and testify at the public hearing of the authority.

(8) (a) The hearing may be continued by the governing body of the authority as necessary. After the public hearing, the governing body of the authority may, by resolution, impose, establish, change, or increase rates, fees, or charges.

(b) Within 10 days after adoption of a resolution establishing or changing rates, fees, or charges of the authority, an officer of the authority shall send a copy of the resolution to each governing body of an affected district or municipal customer.

(9) The authority is not required to hold a public hearing for a cumulative rate increase of less than or equal to 5% within a 12-month period if the governing body of the authority provides notification of the increase to rural customers and to the governing bodies of district customers and municipal customers on whom the rate will be imposed at least 10 days prior to the passage or enactment of the ordinance or resolution implementing the increase.

History: En. Sec. 16, Ch. 498, L. 1999; amd. Sec. 6, Ch. 187, L. 2013.

75-6-327. Refunding revenue bonds. If the authority has issued bonds under the provisions of this part, it may by resolution issue refunding bonds for the purpose of retiring or refinancing outstanding bonds, together with any unpaid interest on the bonds and any redemption premium. All of the provisions of this part relating to the issuance, security, and payment of bonds apply to the refunding bonds. However, the bonds are subject to the provisions of the proceedings that authorized the issuance of the bonds to be refunded.

History: En. Sec. 17, Ch. 498, L. 1999.

75-6-328. Exemption from taxation. Bonds issued pursuant to this part and the interest on the bonds, together with all properties and facilities of the authority owned or used in connection with the water supply, wastewater transportation, or treatment system, and all the

money, revenue, and other income of the authority derived from the water supply, wastewater transportation, or treatment system are exempt from all taxation by the state or any county, municipality, political subdivision, or agency of the state, county, or municipality.

History: En. Sec. 18, Ch. 498, L. 1999.

75-6-329. Bonds as legal investment. Bonds issued under the provisions of this part are legal investments for banks, building and loan associations, and insurance companies organized under the laws of this state.

History: En. Sec. 19, Ch. 498, L. 1999.

CHAPTER 7
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Chapter Cross-References

Wetlands Protection Advisory Council, 2-15-3405.
Smith River Management Act, Title 23, ch. 2, part 4.

Part 1
Streambeds

Part Cross-References

Ferrykeepers to keep banks of streams at landings in good repair, 7-14-2826.
Fish and Wildlife Commission to adopt rules for protection of streams from adverse recreational use, 23-2-302.
Construction of pipelines across streams, 69-13-103.
Watercourses — accretion and reclamation of banks, Title 70, ch. 18, part 2.
Failure to issue mining permit — protection of streambeds, Title 82, ch. 4, part 2.
Metal mine reclamation, Title 82, ch. 4, part 3.
Water conservancy districts — flow regulation, 85-9-102.
Fishing access sites and frontages — funds for recreational use, 87-1-605.
Stream protection of fish and wildlife resources — plans for construction or hydraulic projects, Title 87, ch. 5, part 5.

75-7-101. Short title. This part may be cited as "The Natural Streambed and Land Preservation Act of 1975".

History: En. 26-1510 by Sec. 1, Ch. 463, L. 1975; R.C.M. 1947, 26-1510.

75-7-102. Intent — policy. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Natural Streambed and Land Preservation Act of 1975. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) It is the policy of the state of Montana that its natural rivers and streams and the lands and property immediately adjacent to them within the state are to be protected and preserved to be available in their natural or existing state and to prohibit unauthorized projects and, in so doing, to keep soil erosion and sedimentation to a minimum, except as may be necessary and appropriate after due consideration of all factors involved. Further, it is the policy of this state to recognize the needs of irrigation and agricultural use of the rivers and streams of the state of Montana and to protect the use of water for any useful or beneficial purpose as guaranteed by The Constitution of the State of Montana.

History: En. 26-1511 by Sec. 2, Ch. 463, L. 1975; R.C.M. 1947, 26-1511; amd. Sec. 11, Ch. 361, L. 2003.

Cross-References

Water rights, Art. IX, sec. 3, Mont. Const.
Beneficial use defined, 85-2-102.
Adjudication of water rights, Title 85, ch. 2, part 2.
Policy for protection of fish and wildlife resources in streams, 87-5-501.

75-7-103. Definitions. As used in this part, the following definitions apply:

(1) "Applicant" means any person presenting notice of a project to the supervisors.

(2) "Department" means the Montana department of fish, wildlife, and parks.

(3) "District" means:

(a) a conservation district under Title 76, chapter 15, in which the project will take place;

(b) a grass conservation district under Title 76, chapter 16, where a conservation district does not exist; or

(c) the board of county commissioners in a county where a district does not exist.

(4) "Person" means any individual, corporation, firm, partnership, association, or other legal entity not covered under 87-5-502.

(5) (a) "Project" means a physical alteration or modification that results in a change in the state of a natural, perennial-flowing stream or river, its bed, or its immediate banks.

(b) Project does not include:

(i) an activity for which a plan of operation has been submitted to and approved by the district. Any modification to the plan must have prior approval of the district.

(ii) customary and historic maintenance and repair of existing irrigation facilities that do not significantly alter or modify the stream in contravention of 75-7-102; or

(iii) livestock grazing activities.

(6) "Stream" means any natural, perennial-flowing stream or river, its bed, and its immediate banks except a stream or river that has been designated by district rule as not having significant aquatic and riparian attributes in need of protection or preservation under 75-7-102.

(7) "Supervisors" means the board of supervisors of a conservation district, the directors of a grass conservation district, or the board of county commissioners where a proposed project is not within a district.

(8) "Team" means one representative of the supervisors, one representative of the department, and the applicant or the applicant's representative.

(9) "Written consent of the supervisors" means a written decision of the supervisors approving a project and specifying activities authorized to be performed in completing the project.

History: En. 26-1512 by Sec. 3, Ch. 463, L. 1975; R.C.M. 1947, 26-1512; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 551, L. 1987; amd. Sec. 1, Ch. 426, L. 1995; amd. Sec. 1, Ch. 447, L. 2003.

Cross-References

Composition of Board of County Commissioners, 7-4-2101.
Conservation district supervisors, Title 76, ch. 15.
Grass Conservation Act, Title 76, ch. 16.

75-7-104. Vested water rights preserved. This part shall not impair, diminish, divest, or control any existing or vested water rights under the laws of the state of Montana or the United States.

History: En. 26-1516 by Sec. 7, Ch. 463, L. 1975; R.C.M. 1947, 26-1516.

Cross-References

Existing water rights protected, Art. IX, sec. 3, Mont. Const.

75-7-105. Application of flood plain management. Approval for proposed projects or alternate plans does not relieve the applicant of the responsibility of complying with Title 76, chapter 5, parts 1 through 4, floodway management and regulation, where designated flood plains or designated floodways have been established in accordance with that chapter.

History: En. 26-1519 by Sec. 10, Ch. 463, L. 1975; R.C.M. 1947, 26-1519.

75-7-106. Junked motor vehicles as reinforcement prohibited — penalty. (1) It is unlawful to place junked motor vehicles or the body portion of junked motor vehicles between the channel banks of any stream or to reinforce banks of a stream with junked motor vehicles or the body portion of junked motor vehicles.

(2) A person who violates subsection (1) is subject to penalties as provided in 75-7-123.

History: (1)En. 69-6811 by Sec. 1, Ch. 112, L. 1975; amd. Sec. 19, Ch. 140, L. 1977; Sec. 69-6811, R.C.M. 1947; (2), (3)En. 69-6812 by Sec. 2, Ch. 112, L. 1975; amd. Sec. 8, Ch. 252, L. 1977; Sec. 69-6812, R.C.M. 1947; R.C.M. 1947, 69-6811, 69-6812(part); amd. Sec. 2, Ch. 426, L. 1995.

Cross-References

Ordinary high-water mark defined, 23-2-301.
Venue for action arising on stream, 25-2-124.
Execution of criminal fine, 46-19-102.
Motor vehicle recycling and disposal, Title 75, ch. 10, part 5.

75-7-107 through 75-7-110 reserved.

75-7-111. Notice of project. (1) A person planning to engage in a project shall present written notice of the proposed project to the supervisors before any portion of the project takes place.

(2) The notice must include the location, general description, and preliminary plan of the project.

(3) At the time of filing a notice of the proposed project under subsection (1), the applicant may sign an arbitration agreement as provided in 75-7-117.

(4) The district may authorize a representative to accept notices of proposed projects.

History: En. 26-1513 by Sec. 4, Ch. 463, L. 1975; R.C.M. 1947, 26-1513; amd. Sec. 3, Ch. 426, L. 1995; amd. Sec. 1, Ch. 581, L. 2003.

Cross-References

Removal of obstructions caused by beaver and beaver dams, 87-1-224.

75-7-112. Procedure for considering projects — team. (1) Upon acceptance of a notice of a proposed project, the district or the district's authorized representative shall, within 10 working days, notify the department of the project. If at any time during the review process the supervisors determine that provisions of this part do not apply to a notice of the proposed project, the applicant may proceed upon written notice of the supervisors. The department

shall, within 5 working days of receipt of the notification, inform the supervisors whether the department requests an onsite inspection by a team.

(2) The supervisors shall call a team together within 20 days of receipt of the request of the department for an onsite inspection. A member of the team shall notify the supervisors in writing, within 5 working days after notice of the call for an inspection, of the team member's waiver of participation in the inspection. If the department does not request an onsite inspection within the time specified in this subsection, the supervisors may deny, approve, or modify the project.

(3) Each member of the team shall recommend in writing, within 30 days of the date of inspection, denial, approval, or modification of the project to the supervisors. The applicant may waive participation in this recommendation.

(4) The supervisors shall review the proposed project and affirm, overrule, or modify the individual team recommendations and notify the applicant and team members, within 60 days of the date of application, of their decision.

(5) (a) When a member of the team, other than an applicant, disagrees with the supervisors' decision, the team member shall request, within 5 working days of receipt of the supervisors' decision, that an arbitration panel as provided in 75-7-114 be appointed to hear the dispute and make a final written decision regarding the dispute.

(b) When an applicant disagrees with the supervisors' decision, the applicant shall, within 30 working days of receipt of the supervisors' decision:

(i) agree to arbitration under this section and request that an arbitration panel, as provided for in 75-7-114, be appointed to hear the dispute and make a final written decision regarding the dispute; or

(ii) appeal the decision of the supervisors to the district court for the county where the project is located.

(6) Upon written consent of the supervisors, the applicant shall notify the supervisors in writing within 30 days if the applicant wishes to proceed with the project in accordance with the supervisors' decision. Work may not be commenced on a project before the end of a 15-day waiting period unless written permission is given by all team members and the district.

(7) The supervisors may extend, upon the request of a team member, the time limits provided in subsections (3) and (4) when, in their determination, the time provided is not sufficient to carry out the purposes of this part. The time extension may not, in total, exceed 1 year from the date of application. The applicant must be notified, within 60 days of the date of application, of the initial time extension and must be notified immediately of any subsequent time extensions.

(8) Work on a project under this part may not take place without the written consent of the supervisors.

(9) The team, in making its recommendation, and the supervisors, in denying, approving, or modifying a project, shall determine:

(a) the purpose of the project; and

(b) whether the proposed project is a reasonable means of accomplishing the purpose of the proposed project. To determine if the project is reasonable, the following must be considered:

(i) the effects on soil erosion and sedimentation, considering the methods available to complete the project and the nature and economics of the various alternatives;

(ii) whether there are modifications or alternative solutions that are reasonably practical that would reduce the disturbance to the stream and its environment and better accomplish the purpose of the proposed project;

(iii) whether the proposed project will create harmful flooding or erosion problems upstream or downstream;

(iv) the effects on stream channel alteration;

(v) the effects on streamflow, turbidity, and water quality caused by materials used or by removal of ground cover; and

(vi) the effect on fish and aquatic habitat.

(10) If the supervisors determine that a proposed project or part of a proposed project should be modified, they may condition their approval upon the modification.

(11) The supervisors may not approve or modify a proposed project unless the supervisors determine that the purpose of the proposed project will be accomplished by reasonable means.

History: En. 26-1514 by Sec. 5, Ch. 463, L. 1975; amd. Sec. 1, Ch. 140, L. 1977; R.C.M. 1947, 26-1514; amd. Sec. 4, Ch. 426, L. 1995; amd. Sec. 2, Ch. 581, L. 2003; amd. Sec. 1, Ch. 124, L. 2019.

75-7-113. Emergencies — procedure. (1) The provisions of this part do not apply to those actions that are necessary to safeguard life or property, including growing crops, during periods of emergency. The person responsible for taking action under this section shall notify the supervisors in writing within 15 days of the action taken as a result of an emergency.

(2) The emergency notice given under subsection (1) must contain the following information:

(a) the location of the action taken;

(b) a general description of the action taken;

(c) the date on which the action was taken; and

(d) an explanation of the emergency causing the need for the action taken.

(3) If the supervisors determine that the action taken meets the definition of a project, the supervisors shall send one copy of the notice, within 5 working days of its receipt, to the department.

(4) (a) Except as provided in subsection (4)(b), a team called together as described in 75-7-112(2) shall make an onsite inspection within 20 days of receipt of the emergency notice.

(b) If the governor declares a state of emergency pursuant to 10-3-303, the team shall make an onsite inspection within 30 days of receipt of the emergency notice.

(5) (a) Except as provided in subsection (5)(b), each member of the team shall recommend in writing, within 30 days of the date of the emergency notice, the member's denial, approval, or modification of the project.

(b) If the governor declares a state of emergency pursuant to 10-3-303, each member of the team shall recommend in writing, within 40 days of the date of the emergency notice, the member's denial, approval, or modification of the project.

(6) The supervisors shall review the emergency project and affirm, overrule, or modify the individual team recommendations and notify the applicant and team members of their decision within 60 days of receipt of the emergency notice.

(7) A person who has undertaken an emergency action that is denied or modified shall submit written notice, as provided in 75-7-111, to obtain approval pursuant to 75-7-112 to mitigate the damages to the stream caused by the emergency action and to achieve a long-term solution, if feasible, to the emergency situation. Notice under this subsection must be filed within 90 days after the supervisors' decision.

(8) (a) When a member of the team, other than an applicant, disagrees with the supervisors' decision of an emergency action, the team member shall request that an arbitration panel, as provided for in 75-7-114, be appointed to hear the dispute and to make a final written decision on the dispute.

(b) When an applicant disagrees with the supervisors' decision, the applicant shall, within 30 working days of receipt of the supervisors' decision:

(i) agree to arbitration under this section and request that an arbitration panel, as provided for in 75-7-114, be appointed to hear the dispute and make a final written decision regarding the dispute; or

(ii) appeal the decision of the supervisors to the district court for the county where the project is located.

(9) The failure of a person to perform the following subjects the person to civil and criminal penalties under 75-7-123:

(a) failure to provide emergency notice under subsection (1);

(b) failure to submit a notice of the project under subsection (7); or

(c) failure to implement the terms of a supervisors' decision for the purpose of mitigating the damage to the stream caused by the emergency action and of achieving a permanent solution, if feasible, to the emergency situation.

History: En. 26-1517 by Sec. 8, Ch. 463, L. 1975; amd. Sec. 2, Ch. 140, L. 1977; R.C.M. 1947, 26-1517; amd. Sec. 5, Ch. 426, L. 1995; amd. Sec. 3, Ch. 581, L. 2003; amd. Sec. 2, Ch. 124, L. 2019; amd. Sec. 1, Ch. 180, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 180, L. 2025. Amendment effective April 17, 2025.

Cross-References

Uniform Arbitration Act, Title 27, ch. 5.

75-7-114. Arbitration panel — selection. The arbitration panel shall consist of three members chosen by the senior judge of the judicial district in which the dispute takes place. The members must be residents of that judicial district at the time of selection. This panel shall sit for only that period of time necessary to settle the dispute before it and will review the proposed project in line with the arbitration agreement and the policy set forth in 75-7-102.

History: En. 26-1515 by Sec. 6, Ch. 463, L. 1975; R.C.M. 1947, 26-1515(1); amd. Sec. 6, Ch. 426, L. 1995.

Cross-References

Uniform Arbitration Act, Title 27, ch. 5.

75-7-115. Arbitration panel — costs. Cost of the arbitration panel, computed as for jurors' fees under 3-15-201, shall be borne by the contesting party or parties; all other parties shall bear their own costs.

History: En. 26-1515 by Sec. 6, Ch. 463, L. 1975; R.C.M. 1947, 26-1515(2).

Cross-References

Uniform Arbitration Act, Title 27, ch. 5.

75-7-116. Modification of plan — assignment of costs. (1) If the final decision of the arbitration panel or district court requires modifications or alterations from the original project plan as approved by the supervisors, then the arbitration panel or district court shall include in its decision any part or percent of these modifications or alterations that is for the direct benefit of the public and it shall assign any costs to the proper participant.

(2) Any of the involved entities may withdraw or modify required modification of the project within 10 days after the decision.

History: En. 26-1518 by Sec. 9, Ch. 463, L. 1975; R.C.M. 1947, 26-1518; amd. Sec. 4, Ch. 581, L. 2003.

Cross-References

Uniform Arbitration Act, Title 27, ch. 5.

75-7-117. Rules — minimum standards — arbitration agreement. (1) The department of natural resources and conservation, after consultation with the association of conservation districts, shall adopt and may revise rules setting minimum standards and guidelines for the purposes of this part.

(2) The supervisors of each district shall adopt and may revise by resolution after a public hearing rules setting standards and guidelines for projects and exclusions within their districts that meet, exceed, or are not covered by the minimum standards set by the department under subsection (1).

(3) The department of natural resources and conservation, after consultation with the association of conservation districts, shall prepare an arbitration agreement for use by the conservation districts when an applicant chooses to use arbitration. The arbitration agreement must contain provisions for:

(a) the appointment of arbitrators;

(b) the exercise of power by the arbitrators;

(c) an arbitration hearing process, including time and place for hearing, notification, presentation of witnesses and evidence, cross-examination, subpoenas, depositions, and the issuance of the award or change of award; and

(d) the fees and expenses of arbitration.

History: En. 26-1520 by Sec. 11, Ch. 463, L. 1975; R.C.M. 1947, 26-1520; amd. Sec. 2, Ch. 551, L. 1987; amd. Sec. 189, Ch. 418, L. 1995; amd. Sec. 7, Ch. 426, L. 1995; amd. Sec. 5, Ch. 581, L. 2003.

Cross-References

Montana Administrative Procedure Act — rulemaking, Title 2, ch. 4.

75-7-118 through 75-7-120 reserved.

75-7-121. Review. (1) Any review of final action by the supervisors under 75-7-112 or 75-7-113 may be by arbitration or by the district court of the county where the project is located. Judicial review of an arbitration action is under the provisions of Title 27, chapter 5, part 3, and must be brought in the county where the action is proposed to occur.

(2) An applicant's choice of the judicial review remedy prevails over any other team member's request for arbitration regardless of whether arbitration was requested prior to the filing of a petition for judicial review by the applicant.

History: En. 26-1521 by Sec. 12, Ch. 463, L. 1975; R.C.M. 1947, 26-1521; amd. Sec. 8, Ch. 426, L. 1995; amd. Sec. 12, Ch. 361, L. 2003; amd. Sec. 6, Ch. 581, L. 2003.

Cross-References

Montana Administrative Procedure Act — judicial review, Title 2, ch. 4, part 7.
District Courts, Title 3, ch. 5.
Venue for action arising on stream, 25-2-124.

75-7-122. Public nuisance. Except for emergency action, a project engaged in by any person without prior approval or activities performed outside the scope of written consent of the supervisors, as prescribed in this chapter, is declared a public nuisance and subject to proceedings for immediate abatement.

History: En. 26-1522 by Sec. 13, Ch. 463, L. 1975; R.C.M. 1947, 26-1522; amd. Sec. 9, Ch. 426, L. 1995.

Cross-References

Obstruction of rivers and streams as nuisance, 27-30-101.
Criminal code — public nuisance, 45-8-111.

75-7-123. Penalties — restoration. (1) A person who initiates a project without written consent of the supervisors, performs activities outside the scope of written consent of the supervisors, violates emergency procedures provided for in 75-7-113, or violates 75-7-106 is:

(a) guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed $500; or

(b) subject to a civil penalty not to exceed $500 for each day that person continues to be in violation.

(2) Each day of a continuing violation constitutes a separate violation. The maximum civil penalty is the jurisdictional amount for purposes of 3-10-301. A conservation district may work with a person who is subject to a civil penalty to resolve the amount of the penalty prior to initiating an enforcement action in justice's court to collect a civil penalty.

(3) In addition to a fine or a civil penalty under subsection (1), the person:

(a) shall restore, at the discretion of the court, the damaged stream, as recommended by the supervisors, to as near its prior condition as possible; or

(b) is civilly liable for the amount necessary to restore the stream. The amount of the liability may be collected in an action instituted pursuant to 3-10-301 if the amount of liability does not exceed $15,000. If the amount of liability for restoration exceeds $15,000, then the action must be brought in district court.

(4) Money recovered by a conservation district or a county attorney, whether as a fine or a civil penalty, must be deposited in the depository of district funds provided for in 76-15-523, unless upon order of a justice's court the money is directed to be deposited pursuant to 3-10-601.

History: En. 26-1523 by Sec. 14, Ch. 463, L. 1975; R.C.M. 1947, 26-1523(1); amd. Sec. 1, Ch. 255, L. 1993; amd. Sec. 10, Ch. 426, L. 1995; amd. Sec. 3, Ch. 470, L. 2003; amd. Sec. 8, Ch. 284, L. 2011; amd. Sec. 2, Ch. 331, L. 2021.

Cross-References

Venue for action arising on stream, 25-2-124.
Execution of criminal fine, 46-19-102.
Restoration of damaged streams, 87-5-509.

75-7-124. Repealed. Sec. 4, Ch. 470, L. 2003.

History: En. 26-1523 by Sec. 14, Ch. 463, L. 1975; R.C.M. 1947, 26-1523(2).

75-7-125. Jurisdiction — declaratory ruling — standards — judicial review. (1) (a) The supervisors shall determine the applicability, interpretation, or implementation of any statutory provision or any rule or written consent of the supervisors under this part.

(b) The supervisors' determination pursuant to subsection (1)(a) must be made, in accordance with rules established under 75-7-117, prior to the filing of a petition under subsection (2).

(2) (a) A person who may be directly affected by the applicability, interpretation, or implementation of this part and who disagrees with a determination made under subsection (1) may petition the supervisors for a declaratory ruling.

(b) If the issue raised in the petition for a declaratory ruling is of significant interest to the public, the supervisors shall provide a reasonable opportunity for interested persons and the petitioner to submit data, information, or arguments, orally or in written form, prior to making a ruling.

(c) If the issue raised in the petition for a declaratory ruling is not of significant interest to the public, the supervisors shall provide a reasonable opportunity for the petitioner to submit data, information, or arguments, orally or in written form, prior to making a ruling.

(d) Data and information may be submitted at a hearing before the supervisors. Data and information submitted to the supervisors outside of the hearing process must be made available for public review prior to the hearing being conducted before the supervisors.

(3) A proceeding held under this section is not a contested case proceeding. A declaratory ruling under this section is not subject to the provisions of the Montana Administrative Procedure Act.

(4) A declaratory ruling is subject to judicial review. Judicial review must be conducted by a court without a jury and is limited to the data, information, and arguments made before the supervisors. A court may reverse or modify the supervisors' ruling if substantial rights of the appellant have been prejudiced because the ruling is:

(a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority of the supervisors;

(c) affected by error of law; or

(d) arbitrary or capricious, characterized by abuse of discretion, or a clearly unwarranted exercise of discretion.

(5) A final judgment of a district court under this section may be appealed in the same manner as provided in 2-4-711.

(6) This section may not be interpreted or construed to allow a person to petition for a declaratory ruling under this section for an administrative review of a decision of the supervisors under 75-7-112 or 75-7-113 granting, denying, or conditioning a written consent. Review of a final action by the supervisors pursuant to 75-7-112 or 75-7-113 is exclusively provided for in 75-7-121.

History: En. Sec. 1, Ch. 288, L. 2003.

Part 2
Lakeshores

Part Cross-References

Recreational use of lakes not addressed, 23-2-310.
Water conservancy districts — level regulation, 85-9-102.
Recreational use — rules, 87-1-303.
Frontages — funds for recreational uses, 87-1-605.

75-7-201. Policy. The legislature finds and declares that the natural lakes of Montana are high in scenic and resource values and that the conservation and protection of these lakes is important to the continued value of lakeshore property as well as to the state's residents and visitors who use and enjoy the lakes. The legislature further declares that local governments should play the primary public roles in establishing policies to conserve and protect lakes. Local governments do not have adequate statutory powers to protect their lake areas, and it is the purpose of this part to confer such powers on local governments, provided that such powers are exercised to maintain public health, welfare, and safety.

History: En. 89-3701 by Sec. 1, Ch. 527, L. 1975; R.C.M. 1947, 89-3701.

Cross-References

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.
Duty to maintain clean and healthful environment, Art. IX, sec. 1, Mont. Const.

75-7-202. Definitions. As used in this part, the following definitions apply:

(1) "Lake" means a body of standing water and the area within its lakeshore occurring naturally rather than by virtue of constructed impoundments (although a natural lake whose level is raised and whose area is increased by the construction of impoundments includes the additional level and area), having a water surface area of at least 160 acres for at least 6 months in a year of average precipitation as such averages are determined by the United States

geological survey, not used exclusively for agricultural purposes, and navigable by canoes and small boats.

(2) "Lakeshore" is the perimeter of a lake when the lake is at mean annual high-water elevation, including the land within 20 horizontal feet from that high-water elevation.

(3) "Local governing body" or "governing body" is that unit of local government authorized to administer the Montana Subdivision and Platting Act on the land adjoining a lake or part of a lake subject to this part.

(4) "Mean annual high-water elevation" is the mean average of the highest elevation of a lake in each of at least 5 consecutive years, excluding any high levels caused by erratic or unusual weather or hydrological conditions. A highest elevation caused by operation of a dam or other impoundment counts toward the establishment of the mean annual high-water elevation.

History: En. 89-3702 by Sec. 2, Ch. 527, L. 1975; R.C.M. 1947, 89-3702(part).

Cross-References

Montana Subdivision and Platting Act — governing body, 76-3-103.

75-7-203. Change in definition of lake by local government. A local governing body may by resolution change the minimum size in the definition of a lake so that this part may apply to natural lakes in the county no smaller than 20 acres in water surface area.

History: En. 89-3702 by Sec. 2, Ch. 527, L. 1975; R.C.M. 1947, 89-3702(part).

75-7-204. Work for which permit required. (1) A person who proposes to do any work that will alter or diminish the course, current, or cross-sectional area of a lake or its lakeshore must first secure a permit for the work from the local governing body.

(2) Without limitation, the following activities, when conducted below mean annual high-water elevation, are examples of work for which a permit is required: construction of channels and ditches; dredging of lake bottom areas to remove muck, silt, or weeds; lagooning, meaning the placement of a narrow strip of land across a portion of a lake to create a lagoon; filling; constructing breakwaters of pilings; constructing wharves and docks.

History: En. 89-3703 by Sec. 3, Ch. 527, L. 1975; R.C.M. 1947, 89-3703; amd. Sec. 8, Ch. 68, L. 1979.

75-7-205. Unauthorized work. A person who performs work in a lake without a permit for that work shall, if required by the local governing body or the district court, restore the lake to its condition before the person disturbed it.

History: En. 89-3708 by Sec. 8, Ch. 527, L. 1975; R.C.M. 1947, 89-3708(1); amd. Sec. 2498, Ch. 56, L. 2009.

Cross-References

Nuisance, Title 27, ch. 30.

Criminal code — public nuisance, 45-8-111.

75-7-206. Nature of property rights under part. Work or development authorized or approved under this part shall not create a vested property right in the permitted development other than in the physical structure, if any, so developed.

History: En. 89-3708 by Sec. 8, Ch. 527, L. 1975; R.C.M. 1947, 89-3708(2).

75-7-207. Regulations for issuance of permits. (1) Before January 1, 1976, every governing body having jurisdiction over an area containing a lake shall adopt regulations in the form of criteria for the issuance or denial of permits for work in lakes.

(2) Where a planning board has been created under 76-1-104 for an area containing a lake, the governing body shall seek the recommendations of the planning board as to the regulations to be adopted under this part.

(3) The local governing body may provide a summary procedure to permit work which it finds has a minimal or insignificant impact on a lakeshore.

(4) A governing body whose area contains more than one lake may adopt regulations in differing form for the various lakes, recognizing the physical and social differences between lakes.

(5) The requirements of 75-7-208 are minimum requirements and do not restrict a local governing body from adopting such stricter or additional regulations as may be authorized by other statutes.

History: En. 89-3704 by Sec. 4, Ch. 527, L. 1975; R.C.M. 1947, 89-3704(1), (3) thru (5).

Cross-References

Montana Subdivision and Platting Act — local governing body, 76-3-103.

75-7-208. Factors favoring issuance of permit. The regulations shall favor issuance if the proposed work will not during either its construction or its utilization:

(1) materially diminish water quality;

(2) materially diminish habitat for fish or wildlife;

(3) interfere with navigation or other lawful recreation;

(4) create a public nuisance; or

(5) create a visual impact discordant with natural scenic values, as determined by the local governing body, where such values form the predominant landscape elements.

History: En. 89-3704 by Sec. 4, Ch. 527, L. 1975; R.C.M. 1947, 89-3704(2).

Cross-References

Water quality classifications and standards, Title 75, ch. 5, part 3.

75-7-209. Regulations for particular lake. Upon petition of five owners or 30% of the owners of land abutting a lake, whichever is smaller, the department of natural resources and conservation may adopt regulations under 75-7-207 and 75-7-208 for the particular lake. The department may then exercise the powers conferred upon a local governing body by this part until the governing body adopts the necessary regulations.

History: En. 89-3704 by Sec. 4, Ch. 527, L. 1975; R.C.M. 1947, 89-3704(6).

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

75-7-210. Application for permit — fee. (1) A person seeking a permit for work in a lake or on a lakeshore shall apply to the local governing body and shall pay a permit fee established by the governing body under subsection (2).

(2) The local governing body shall establish a permit fee as provided in subsection (1). The permit fee must be commensurate with the cost of administering the permit application. Factors the local governing body shall consider when establishing the fee include but are not limited to:

(a) the annual estimated total number of permit requests;

(b) the complexity of the specific project;

(c) the need for and location and number of onsite investigations; and

(d) the estimated cost of the specific project.

History: En. 89-3705 by Sec. 5, Ch. 527, L. 1975; R.C.M. 1947, 89-3705(part); amd. Sec. 1, Ch. 648, L. 1991; amd. Sec. 1, Ch. 40, L. 2001.

75-7-211. Consultation with local planning board. (1) Where a planning board has been created under 76-1-104 for the area containing the lake in question, the governing body shall seek the recommendation of the planning board as to the compliance of the proposed work with the criteria for the issuance of a permit. The planning board shall report its recommendations to the governing body as to whether the proposed work conforms to the criteria for issuance of a permit and may require the applicant to submit additional information before the board reports its recommendations.

(2) In areas where a planning board is not established, the functions of a planning board under this section shall be exercised by the local governing body.

History: En. 89-3705 by Sec. 5, Ch. 527, L. 1975; R.C.M. 1947, 89-3705(part).

Cross-References

Montana Subdivision and Platting Act — governing body, 76-3-103.

75-7-212. Issuance of permit. (1) Unless the applicant agrees to an extension of time, the governing body shall grant or deny permission for the work within 90 days of receiving an application for a permit.

(2) If the governing body finds that the proposed work conforms to the criteria for issuing a permit, it shall issue a permit or conditional permit.

(3) If the governing body finds that the work does not conform to the criteria, it shall deny the application.

History: En. 89-3706 by Sec. 6, Ch. 527, L. 1975; R.C.M. 1947, 89-3706.

75-7-213. Variance procedure. A governing body which proposes to grant a variance from its regulations under this part shall first prepare an environmental impact statement, at the expense of the applicant, which conforms to the requirements of regulations adopted

pursuant to this part, distribute this statement to interested residents, and conduct a public hearing on the proposed action.

History: En. 89-3707 by Sec. 7, Ch. 527, L. 1975; R.C.M. 1947, 89-3707.

Cross-References

Environmental impact statements, 75-1-201.

75-7-214. Cooperation between governing bodies. If a lake, as defined by this part, is located under the jurisdiction of more than one governing body, the governing bodies are empowered and encouraged to enter into agreements to effectuate the purposes of this part and establish compatible criteria for denial or issuance of permits.

History: En. 89-3709 by Sec. 9, Ch. 527, L. 1975; R.C.M. 1947, 89-3709.

75-7-215. Judicial enforcement and review. The district court may hear and decide the following cases arising under this part within the district:

(1) a complaint and petition of a governing body or an interested person for an order to restore a lake to its previous condition or to enjoin further work in a lake;

(2) a petition of an interested person for review of a final action of a governing body upon an application for a permit;

(3) a petition of an interested person for review of an action of a governing body in adopting or amending regulations.

History: En. 89-3710 by Sec. 10, Ch. 527, L. 1975; R.C.M. 1947, 89-3710.

Cross-References

Montana Administrative Procedure Act — judicial review, Title 2, ch. 4, part 7.
District Courts, Title 3, ch. 5.
Venue for actions arising from lake dispute, 25-2-124.
Injunctions, Title 27, ch. 19.
Mandamus, Title 27, ch. 26.

75-7-216. Penalty. (1) A person who violates an order issued under this part or who knowingly violates a regulation made under this part commits a misdemeanor and on conviction may be sentenced to 30 days in the county jail or fined $500, or both.

(2) Fines collected under this section, except those collected in a justice's court, shall be paid to the general fund of the county where the offense was committed for the purpose of administering this part.

History: En. 89-3711 by Sec. 11, Ch. 527, L. 1975; R.C.M. 1947, 89-3711; amd. Sec. 44, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.
Execution of criminal fine, 46-19-102.

75-7-217. Funding. In compliance with 1-2-112, the administration of this part is declared a public purpose of a city or county which may be paid out of permit application fees collected under 75-7-210 and federal revenue sharing moneys.

History: En. 89-3712 by Sec. 12, Ch. 527, L. 1975; R.C.M. 1947, 89-3712.

75-7-218. Lakeshore protection zone statute of limitations — exemptions from future permitting. (1) (a) As applied to any clearly visible boat ramp, boat house, boat shore station, boat rail system, dock system, pier, wharf, retaining wall, road, or other structure located within the lakeshore protection zone, the period prescribed for the commencement of an action against a property owner or the property owner's contractor for a violation of lakeshore regulations adopted pursuant to 75-7-207 is within 3 years of completion of construction or issuance of the permit, whichever occurs later.

(b) The limitation set forth in subsection (1)(a) does not apply to an item that was constructed illegally and that:

(i) causes documented, material harm to lakeshore stability, water quality, or aquatic life;

(ii) materially interferes with navigation or other lawful recreation activities; or

(iii) creates a documented public nuisance.

(2) (a) Minor ongoing maintenance, minor remodeling, or minor modifications to the items described in subsection (1)(a) are exempt from lakeshore protection review unless the activity involves significant excavation, dredging, in-fill of material, diminishment of aquatic life, or interference with navigation or lawful recreation activities.

(b) For the purposes of subsection (2)(a), "minor" means a change to an item described in subsection (1)(a) that is less than $10,000 over a 5-year period, exclusive of personal services provided by the property owner or another individual at no cost to the property owner.

(3) This section may not be construed to prevent the local governing body or state from compensating a property owner to remove or alter any of the items described in subsection (1)(a) if the governing body or state believes it is in the best interests of lakeshore protection and aquatic life.

History: En. Sec. 1, Ch. 362, L. 2025.

Compiler's Comments

Effective Date: Section 3, Ch. 362, L. 2025, provided: "[This act] is effective on passage and approval." Approved May 5, 2025.

Part 3
Flathead Basin Commission (Repealed)

75-7-301. Repealed. Sec. 9, Ch. 428, L. 2023.
History: En. Sec. 1, Ch. 424, L. 1983.

75-7-302. Repealed. Sec. 9, Ch. 428, L. 2023.
History: En. Sec. 2, Ch. 424, L. 1983.

75-7-303. Repealed. Sec. 9, Ch. 428, L. 2023.
History: En. Sec. 3, Ch. 424, L. 1983; amd. Sec. 2, Ch. 537, L. 2003.

75-7-304. Repealed. Sec. 9, Ch. 428, L. 2023.
History: En. Sec. 7, Ch. 424, L. 1983; amd. Sec. 49, Ch. 112, L. 1991.

75-7-305. Repealed. Sec. 9, Ch. 428, L. 2023.
History: En. Sec. 8, Ch. 424, L. 1983; amd. Sec. 1, Ch. 244, L. 1985; amd. Sec. 9, Ch. 628, L. 1989.

75-7-306. Repealed. Sec. 3, Ch. 243, L. 1999.
History: En. Sec. 9, Ch. 424, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 7, Ch. 700, L. 1989.

75-7-307. Repealed. Sec. 9, Ch. 428, L. 2023.
History: En. Sec. 10, Ch. 424, L. 1983.

75-7-308. Repealed. Sec. 9, Ch. 428, L. 2023.
History: En. Sec. 11, Ch. 424, L. 1983.

Part 4
Phosphorus Compounds — Model Rule

75-7-401. Adoption and amendment of model rule on sale and distribution of certain phosphorus compounds. (1) The department of environmental quality shall adopt a model rule to provide standards that counties may adopt under 75-7-411 to prohibit the sale and distribution of certain phosphorus compounds used for cleaning.

(2) The standards in the model rule must be designed to protect water quality and aquatic ecosystems by reducing the amount of phosphorus that will enter state waters.

(3) The department may amend the model rule to:

(a) reflect changing technology related to phosphorus compounds in cleaning products;

(b) incorporate new findings about the impacts of phosphorus compounds on water quality; or

(c) respond to other relevant information.

(4) The department shall follow the procedures of Title 2, chapter 4, part 3, in adopting or amending the model rule.

History: En. Sec. 1, Ch. 574, L. 1985; amd. Sec. 190, Ch. 418, L. 1995.

Cross-References

Department of Environmental Quality, Title 2, ch. 15, part 35.
Counties, Title 7, ch. 1, part 21.
Water quality, Title 75, ch. 5.

75-7-402. Distribution of model rule. The department shall send to the governing body of each county a notice of any rulemaking proceeding or hearing under 75-7-401, a copy of the model rule, and a copy of any amendment proposed or adopted.

History: En. Sec. 3, Ch. 574, L. 1985.

Cross-References

Department of Environmental Quality, Title 2, ch. 15, part 35.
Counties, Title 7, ch. 1, part 21.
Water quality, Title 75, ch. 5.

75-7-403. Prohibition of enforcement by department. The department may not enforce any standard or provision of the model rule. As provided in 75-7-411, the governing body of a county may adopt and enforce as an ordinance the standards contained in the model rule.

History: En. Sec. 2, Ch. 574, L. 1985.

Cross-References

Department of Environmental Quality, Title 2, ch. 15, part 35.
Counties, Title 7, ch. 1, part 21.
Water quality, Title 75, ch. 5.

75-7-404 through 75-7-410 reserved.

75-7-411. County regulation of sale and distribution of certain phosphorus compounds. (1) The governing body of a county may adopt, through the procedures of 7-5-103 through 7-5-107, an ordinance prohibiting the sale and distribution of certain phosphorus compounds used for cleaning purposes. The governing body may rescind, modify, or repeal the ordinance at any time by use of the same procedures.

(2) An ordinance prohibiting the sale and distribution of certain phosphorus compounds used for cleaning purposes may be adopted only if:

(a) the county has a natural lake, whether or not it is fitted with a dam, for which the department of environmental quality or the governing body of the county has determined that eutrophication enhanced by human activity is occurring and that phosphorus is the limiting factor; and

(b) other efforts are being undertaken in the county to reduce the amount of phosphorus entering surface waters.

(3) Any ordinance adopted by the governing body of a county must contain standards designated by the model rule adopted by the department of environmental quality under 75-7-401 and in effect at the time of the adoption of the county ordinance.

(4) Any ordinance adopted by the governing body of a county must be enforced by the county.

(5) The provisions of this part do not apply to counties where the sale of phosphorus-containing household cleaning products is banned pursuant to 75-5-904 and 75-5-905.

History: En. Sec. 4, Ch. 574, L. 1985; amd. Sec. 191, Ch. 418, L. 1995; amd. Sec. 6, Ch. 245, L. 2009.

Cross-References

Department of Environmental Quality, Title 2, ch. 15, part 35.
Counties, Title 7, ch. 1, part 21.
Water quality, Title 75, ch. 5.

75-7-412. Penalty. (1) A person involved in the sale or commercial distribution of any phosphorus compound prohibited by an ordinance adopted under 75-7-411 must be notified by the county and must be given 30 days from receipt of such notice to comply with the ordinance. Failure to comply with the ordinance following this 30-day period is a misdemeanor. Each day of violation is a separate offense.

(2) The penalty provided for in subsection (1) applies only to persons engaged in the sale or commercial distribution of prohibited phosphorus compounds. The county may not prosecute or otherwise penalize a person for using a phosphorus compound regulated by an ordinance adopted under 75-7-411.

History: En. Sec. 5, Ch. 574, L. 1985.

Cross-References

Misdemeanor penalty when no penalty specified, 46-18-212.

CHAPTER 8
COAL-FIRED GENERATING UNIT REMEDIATION

Part 1 — Coal-Fired Generating Unit Remediation Act

75-8-101. Short title.
75-8-102. Findings — intent.
75-8-103. Definitions.
75-8-104. Integration — construction in event of conflict.
75-8-105. Remediation plan.
75-8-106. Approval of plan — time limits — contents and expiration.
75-8-107. Degree of cleanup required — labor requirements.
75-8-108. Remediation plan — appeal — venue.
75-8-109. Enforcement of plan — penalty.
75-8-110. Water feasibility study.

Part 2 — Economic Impacts

75-8-201. Terminated.

Part 3 — Water Infrastructure Mitigation

75-8-301 through 75-8-304 reserved.
75-8-305. Town of Colstrip water infrastructure mitigation account.

Part 1
Coal-Fired Generating Unit Remediation Act

75-8-101. Short title. This part may be cited as the "Coal-Fired Generating Unit Remediation Act".

History: En. Sec. 1, Ch. 320, L. 2017.

75-8-102. Findings — intent. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Coal-Fired Generating Unit Remediation Act.

(2) It is the legislature's intent that the requirements of this part ensure that appropriate remedies are in place when a coal-fired generating unit is retired to ensure the protection of the environmental life support systems from degradation and to provide adequate remedies to prevent unreasonable degradation of natural resources.

History: En. Sec. 2, Ch. 320, L. 2017.

75-8-103. Definitions. As used in this part, the following definitions apply:

(1) (a) "Affected property" means the property owned by or under the control of an owner that is affected by a coal-fired generating unit, including:

(i) land, surface water, or ground water directly affected by the coal-fired generating unit, associated impoundments, disposal and waste operations, buildings, structures, or other improvements or operations infrastructure; and

(ii) areas affected by activities necessary to the closure and dismantling of the coal-fired generating unit.

(b) The term does not include:

(i) land, water, or air affected or potentially affected by emissions from the operation of a coal-fired generating unit; or

(ii) the mining of coal at an underground or strip mine and used at the coal-fired generating unit.

(2) "Applicable legal obligations" means any applicable state or federal environmental laws, including but not limited to the Montana Water Quality Act, rules regarding disposal of coal combustion residuals from electric utilities, the Montana Major Facility Siting Act, and other applicable laws administered by the department in accordance with Title 75. The term includes:

(a) any consent order or settlement entered into by the department and an operator or owner imposing obligations to undertake remediation actions at the coal-fired generating unit or affected property; and

(b) a water feasibility study completed in accordance with 75-8-110.

(3) "Coal-fired generating unit" means an individual unit of a coal-fired electrical generating facility located in Montana, where the unit has a generating capacity that is greater than or equal to 200 megawatts.

(4) "Department" means the department of environmental quality provided for in 2-15-3501.

(5) "Operator" means the person engaged in operating or undertaking remediation actions at a coal-fired generating unit. An operator may or may not be an owner.

(6) "Owner" means a person who has a legal or equitable interest in property subject to this part or the person's legal representative.

(7) "Person" means an individual, partnership, corporation, association, or other legal entity or any political subdivision of the state or federal government.

(8) "Reasonably anticipated future uses" means likely future land or resource uses that take into consideration:

(a) local land and resource use regulations, ordinances, restrictions, or covenants;

(b) historical and anticipated uses of a site where a coal-fired generating unit is located;

(c) patterns of development in the immediate area; and

(d) relevant indications of anticipated land use from an operator or owner, or both, of a coal-fired generating unit, affected property owners, and local planning officials.

(9) "Remediation" means all actions required by an applicable legal obligation directed exclusively toward achieving a degree of cleanup required in accordance with 75-8-107.

(10) "Retired" or "retire" means the complete and permanent closure of a coal-fired generating unit. Retirement occurs on the date that the coal-fired generating unit ceases combustion of fuel and permanently ceases to generate electricity.

History: En. Sec. 3, Ch. 320, L. 2017; amd. Sec. 2, Ch. 441, L. 2021.

75-8-104. Integration — construction in event of conflict. (1) To avoid unnecessary duplication, the department shall integrate the provisions of this part with applicable legal obligations.

(2) If this part or any action taken by the department in accordance with this part conflicts with applicable legal obligations, the applicable legal obligations supersede the provisions of this part.

History: En. Sec. 4, Ch. 320, L. 2017.

75-8-105. Remediation plan. (1) No later than 3 months after a coal-fired generating unit is retired and no earlier than 5 years prior to a coal-fired generating unit's planned retirement, an owner shall submit a proposed remediation plan that contains:

(a) the name of the operator of the coal-fired generating unit and the names and addresses of all owners of the coal-fired generating unit;

(b) a general overview of the site where the unit is located, the unit itself, and affected property;

(c) the current and reasonably anticipated future uses of affected property; and

(d) remediation information, including:

(i) a list of reports, studies, or other evaluations related to remediation and specific remediation measures already completed or under way pursuant to any applicable legal obligation; and

(ii) the manner in which the remediation measures satisfy the requirements of 75-8-107 and a description of how the owner will comply.

(2) (a) If a coal-fired generating unit has more than one owner, the owners may jointly submit a remediation plan in accordance with this part.

(b) If the owners are unable to submit a joint plan, then each owner of the coal-fired generating unit that is being retired or is retired is responsible for meeting the requirements of this part. If separate plans are filed, the department shall ensure that the plans detail legal obligations. If there is a conflict in the plans, the department shall reconcile the conflict to ensure that the plans are consistent with existing law and legal obligations.

(3) A plan required pursuant to subsection (1) may consist of a plan for more than one unit that is retired at the same time and planned for simultaneous remediation.

(4) The filing of a plan is not a commitment to retire a coal-fired generating unit on any particular date that is not otherwise required by an applicable legal obligation.

History: En. Sec. 5, Ch. 320, L. 2017.

75-8-106. Approval of plan — time limits — contents and expiration. (1) (a) The department shall review for completeness a remediation plan and provide a written completeness notice to an owner within 60 days of receipt of the remediation plan and within 30 days of receipt of responses to notices of deficiencies. The initial completeness notice must include all deficiencies identified in the information submitted.

(b) Review of the plan is not subject to Title 75, chapter 1, parts 1 through 3.

(c) During the review period provided in subsection (5), an owner may respond in writing to the comments received by the department during the public comment period.

(2) The department shall provide formal written notification of approval or modification within 120 days of determining a proposed remediation plan is complete, unless the owner and the department agree to an extension of the review to a date certain. Any modification by the department is limited to a modification necessary to conform the plan to applicable legal obligations.

(3) The department may access the site where the unit is located, the unit itself, and affected property, at reasonable times and after reasonable notice to the owner, during review of the plan to confirm information provided by the owner and is consistent with the proposed plan.

(4) The department shall approve a remediation plan if the department concludes that the plan meets the requirements of this part.

(5) Within 10 days of the date the department determines that a proposed remediation plan is complete, the department shall publish a notice and brief summary of the proposed remediation plan in a daily newspaper of general circulation in the area affected and make the plan available to the public. The department also shall post the notice on its website. The notice must provide 45 days for submission of written comments to the department regarding the plan. The notice must also advise the public of the time and place of a public meeting at or near the coal-fired generating unit site regarding the proposed remediation plan. The meeting must be held within 45 days of the date that written notice of the department's completeness determination is provided to the owner or operator. To the extent there is any conflict between the public notice provisions of this section and those contained in any applicable legal obligation, the provisions of the applicable legal obligation supersede the requirements of this subsection.

(6) If a remediation plan is modified by the department, the department shall promptly provide the public with notice through its website and the owner with notice through a written statement of the reasons for modification. A modification may be appealed in accordance with 75-8-108.

(7) To the extent costs are not recovered or recoverable under other applicable legal obligations, the department may recover its actual costs, including administrative costs, for its review of a plan and for its monitoring, inspection, and enforcement activities related to the approved plan. Recovered costs must be deposited in the environmental quality protection fund established in 75-10-704.

History: En. Sec. 6, Ch. 320, L. 2017.

75-8-107. Degree of cleanup required — labor requirements. (1) A remediation plan must demonstrate that it will meet the requirements of subsection (2) and attain a degree of cleanup of the affected property consistent with, but not more stringent than, applicable legal obligations, giving consideration to reasonably anticipated future uses of affected property.

(2) When contracting for the performance of construction, alteration, demolition, installation, repair, or maintenance work to implement a remediation plan, an owner shall require that its contractors and any subcontractors use a skilled and trained workforce to perform all remediation. Contracts signed must require contractors and subcontractors to:

(a) pay the standard prevailing rate of wages as defined in 18-2-401 for remediation; and

(b) pay apprentice wage rates, as applicable, in accordance with 39-6-108 for remediation completed by an apprentice employed by a contractor or subcontractor.

History: En. Sec. 7, Ch. 320, L. 2017; amd. Sec. 1, Ch. 262, L. 2019.

75-8-108. Remediation plan — appeal — venue. (1) (a) Subject to subsection (1)(b), an owner or any person whose interests are or may be materially adversely affected by a final decision of the department to approve or modify a remediation plan under this part may file for judicial review of the department's decision. The request for judicial review and a statement of the basis for the review must be filed with the court within 30 days of the department's decision.

(b) In order for a person to file a request for review under subsection (1)(a), a person must have either submitted comments to the department on a remediation plan or submitted comments at a public meeting held in accordance with 75-8-106(5), or the person must be challenging a change made by the department between the draft and final plan.

(2) An owner may appeal the department's decision on a plan by submitting a request for judicial review. The request for judicial review and the statement of the basis for the review must be filed with the court within 30 days of the department's decision.

(3) In considering a request for review under this part, the court shall uphold the decision made by the department unless the objecting person can demonstrate, on the administrative record, that the department's decision was arbitrary and capricious or otherwise not in accordance with the law.

(4) A petition for judicial review under this section must be brought in the first judicial district, Lewis and Clark County.

History: En. Sec. 8, Ch. 320, L. 2017.

75-8-109. Enforcement of plan — penalty. (1) If the department finds that an owner has failed to file a plan or implement an approved plan, it may serve written notice of the violation, by certified mail, on the owner. The notice must specify the provisions of this part and the facts alleged to constitute a violation. The notice must include an order to take necessary corrective action within a reasonable period of time. The time period must be stated in the order. Service by mail is complete on the date of mailing.

(2) The department's order becomes final unless, within 30 days after notice of the department's decision or determination, the owner submits to the department a written request for a hearing specifying the grounds for the appeal.

(3) (a) An action initiated under this section may include an administrative penalty determined by the department for each day of a violation. If an order issued by the department under this section requires the payment of an administrative civil penalty, the department shall state findings and conclusions describing the basis for its penalty assessment.

(b) Administrative penalties collected under this section must be deposited in the environmental quality protection fund established in 75-10-704.

(c) In determining the amount of penalty to be assessed for an alleged violation under this section, the department shall consider the penalty factors in 75-1-1001.

(d) The department may bring a judicial action to enforce a final administrative order issued pursuant to this subsection (3). The action must be filed in the district court of the first judicial district, Lewis and Clark County.

History: En. Sec. 9, Ch. 320, L. 2017.

75-8-110. Water feasibility study. (1) On or before November 1, 2022, the owners of a coal-fired generating unit shall complete a water feasibility study in accordance with subsection (2). Costs of completing the study must be shared among the owners based on each owner's individual ownership interest in the coal-fired generating unit.

(2) The study required in subsection (1) must include:

(a) planning to ensure a local government attendant to a coal-fired generating unit is able to access the local government's water rights and related infrastructure in the event of closure of the coal-fired generating unit;

(b) an estimation of potential conveyance costs that could be incurred by a local government, for up to a 30-year timeline following closure of a facility; and

(c) recommendations, developed in consultation with the community attendant to a coal-fired generating unit, for meeting financial obligations necessary to ensure the affected local government is able to maintain its water supply and water rights.

(3) The study must be submitted to the department and included in remediation plans required in accordance with this part.

History: En. Sec. 1, Ch. 441, L. 2021.

Part 2
Economic Impacts

75-8-201. Terminated. Sec. 14, Ch. 553, L. 2021.
History: En. Sec. 4, Ch. 553, L. 2021.

Part 3
Water Infrastructure Mitigation

75-8-301 through 75-8-304 reserved.

75-8-305. Town of Colstrip water infrastructure mitigation account. (1) There is a town of Colstrip water infrastructure mitigation account within the state special revenue fund established in 17-2-102.

(2) There must be deposited in the account money allocated pursuant to 15-35-108(11).

(3) Money deposited in the account must be transferred to the town of Colstrip and may be used to pay for costs to ensure a water supply is available to the town if the proximate coal-fired generating unit closes or retires, and the town is unable to access a water supply.

(4) The department [of environmental quality] shall review this account every 10 years to confirm the funding level remains sufficient to meet the purposes of this section. The department shall report its finding to the economic affairs interim committee in accordance with 5-11-210.

History: En. Sec. 1, Ch. 771, L. 2025.

Compiler's Comments

Effective Date — Passage After Veto: This section is effective October 1, 2025. Vetoed by the governor on May 16, 2025, and approved June 16, 2025, the date that the house and senate overrode the governor's veto.

2025 Code Commissioner Correction: As enacted, Ch. 771, L. 2025, did not include a codification instruction or a description of the department that is required to administer this section. The Code Commissioner inserted the bracketed language in (4) to indicate the agency that has subject matter expertise with this topic.

CHAPTER 9
RESERVED

CHAPTER 10
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Chapter Cross-References

County control of litter, 7-5-2109.
Nuisances, Title 27, ch. 30.
Littering on highways prohibited, 61-8-365.
Pesticides, Title 80, ch. 8.
Memorandum of agreement with Department of Agriculture, 80-8-110.
Forfeiture of hunting or fishing license for littering, 87-6-920.

Part 1
Plans, Funds, and Administration

75-10-101. Purpose. The purpose of this part is to encourage the good management of solid waste and the conservation of natural resources through the promotion or development of systems to collect, separate, reclaim, recycle, and dispose of solid waste for energy production purposes when economically feasible and to provide a coordinated state solid waste management and resource recovery plan.

History: En. 69-4012 by Sec. 2, Ch. 575, L. 1977; R.C.M. 1947, 69-4012(part); amd. Sec. 102, Ch. 2, L. 2009.

75-10-102. Public policies. (1) To implement this part, the following are declared to be public policies of this state:

(a) Maximum recycling from solid waste is necessary to protect the public health, welfare, and quality of the natural environment.

(b) Solid waste management systems must be developed, financed, planned, designed, constructed, and operated for the benefit of the people of this state.

(c) Private industry is to be utilized to the maximum extent possible in planning, designing, managing, constructing, operating, manufacturing, and marketing functions related to solid waste management systems.

(d) Local governments shall retain primary responsibility for adequate solid waste management with the state preserving those functions necessary to ensure effective solid waste management systems throughout the state.

(e) Costs for the management and regulation of solid waste management systems should be charged to those persons generating solid waste in order to encourage the reduction of the solid waste stream.

(f) Encouragement and support should be given to individuals and municipalities to separate solid waste at its source in order to maximize the value of those wastes for reuse.

(g) The state shall provide technical advisory assistance to local governments and other affected persons in the planning, developing, financing, and implementation of solid waste management systems.

(h) Actions and activities performed or carried out by persons and their contractors in accordance with this part must be in conformity with the state solid waste management and resource recovery plan.

(i) When licensing a solid waste management system, the department shall consult with units of local government that have jurisdiction over the area encompassing the proposed system.

(2) This part is in addition and supplemental to any other law providing for the financing of a solid waste management system and does not amend or repeal any other law.

History: En. 69-4012, 69-4019 by Secs. 2, 9, Ch. 575, L. 1977; R.C.M. 1947, 69-4012(part), 69-4019; amd. Sec. 1, Ch. 215, L. 1991; amd. Sec. 2, Ch. 643, L. 1991; amd. Sec. 103, Ch. 2, L. 2009.

Cross-References

Beauty of state, Preamble, Mont. Const.
Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.
Duty to maintain clean and healthful environment, Art. IX, sec. 1, Mont. Const.

75-10-103. Definitions. Unless the context clearly requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Container site" means a solid waste management facility that:

(a) is generally open to the public for the collection of solid waste that is generated by more than one household or firm and that is collected in a refuse container with a total capacity of not more than 50 cubic yards; or

(b) receives waste from waste collection vehicles and:

(i) receives no more than 3,000 tons of waste each year;

(ii) has control measures in place, including onsite staffing, to adequately contain solid wastes and blowing litter on the site and to minimize spills and leakage of liquid wastes; and

(iii) is a site at which a local government unit requires commercial waste haulers to deposit wastes at the site only during hours that the site is staffed.

(3) "Department" means the department of environmental quality provided for in 2-15-3501.

(4) "Local government" means a county, incorporated city or town, or solid waste management district organized under the laws of this state.

(5) "Person" means any individual, firm, partnership, company, association, corporation, city, town, or local governmental entity or any other state, federal, or private entity, whether organized for profit or not.

(6) "Resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(7) (a) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage, rubbish, refuse, ashes, sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials.

(b) Solid waste does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department, slash and forest debris regulated under laws administered by the department of natural resources and conservation, or marketable byproducts.

(8) "Solid waste management system" means any system that controls the storage, treatment, recycling, recovery, or disposal of solid waste. For the purposes of this definition, a container site is not a component of a solid waste management system.

(9) "State solid waste management and resource recovery plan" means the statewide plan formulated by the department as authorized by this part.

History: En. 69-4013 by Sec. 3, Ch. 575, L. 1977; R.C.M. 1947, 69-4013; amd. Sec. 1, Ch. 482, L. 1981; amd. Sec. 1, Ch. 213, L. 1991; amd. Sec. 1, Ch. 201, L. 1993; amd. Sec. 192, Ch. 418, L. 1995; amd. Secs. 526, 568, Ch. 546, L. 1995; amd. Sec. 1, Ch. 372, L. 1997; amd. Sec. 1, Ch. 294, L. 1999; amd. Sec. 65, Ch. 7, L. 2001; amd. Sec. 7, Ch. 405, L. 2003; amd. Sec. 104, Ch. 2, L. 2009.

75-10-104. Duties of department. The department shall:

(1) prepare, adopt, and implement a state solid waste management and resource recovery plan as required by 75-10-111 and 75-10-807;

(2) adopt rules necessary for the implementation of this part, including but not limited to rules:

(a) governing the submission of plans for a solid waste management system;

(b) (i) establishing, for the purpose of determining the tonnage or volume-based solid waste management fee that a facility is subject to under 75-10-115(1)(c), methods for determining or estimating the amount of solid waste incinerated or disposed of at a facility; and

(ii) governing the application fee, flat annual license renewal fee, and tonnage or volume-based renewal fee for solid waste management systems;

(c) establishing the license application fee that a facility is subject to under 75-10-115(1)(a);

(d) establishing the flat annual license renewal fee that a facility is subject to under 75-10-115(1)(b);

(e) establishing the tonnage or volume-based annual renewal fee that a facility is subject to under 75-10-115(1)(c); and

(f) providing procedures for the quarterly collection of the solid waste management fee provided for in 75-10-204(6);

(3) provide technical assistance to persons within the state for planning, designing, constructing, financing, and operating:

(a) a solid waste management system in order to ensure that the system conforms to the state plan;

(b) integrated waste management programs; and

(c) collection, disposal, reduction, and educational programs for household hazardous waste and small quantities of hazardous waste that are exempt from regulation under Title 75, chapter 10, part 4;

(4) enforce and administer the provisions of this part;

(5) approve plans for a proposed solid waste management system submitted by a local government; and

(6) serve as a clearinghouse for information on waste reduction and reuse, recycling technology and markets, composting, and household hazardous waste disposal, including chemical compatibility.

History: En. 69-4014 by Sec. 4, Ch. 575, L. 1977; R.C.M. 1947, 69-4014(1); amd. Sec. 10, Ch. 696, L. 1989; amd. Sec. 8, Ch. 222, L. 1991; amd. Sec. 2, Ch. 398, L. 1991; amd. Sec. 3, Ch. 643, L. 1991; amd. Sec. 1, Ch. 145, L. 1993; amd. Sec. 2, Ch. 170, L. 2001; amd. Sec. 8, Ch. 405, L. 2003; amd. Sec. 1, Ch. 54, L. 2007; amd. Sec. 64, Ch. 324, L. 2021.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

75-10-105. Powers of department. The department may:

(1) accept loans and grants from the federal government and other sources to carry out the provisions of this part; and

(2) collect the solid waste management fees provided for in 75-10-115.

History: En. 69-4014 by Sec. 4, Ch. 575, L. 1977; R.C.M. 1947, 69-4014(2); amd. Sec. 2, Ch. 482, L. 1981; amd. Sec. 11, Ch. 696, L. 1989; amd. Sec. 3, Ch. 398, L. 1991; amd. Sec. 2, Ch. 145, L. 1993; amd. Sec. 3, Ch. 170, L. 2001; amd. Sec. 9, Ch. 405, L. 2003.

75-10-106. Repealed. Sec. 111, Ch. 324, L. 2021.

History: En. 69-4015 by Sec. 5, Ch. 575, L. 1977; R.C.M. 1947, 69-4015; amd. Sec. 3, Ch. 482, L. 1981; amd. Sec. 4, Ch. 170, L. 2001; amd. Sec. 10, Ch. 405, L. 2003; amd. Sec. 2, Ch. 54, L. 2007.

75-10-107. State regulations no more stringent than federal regulations or guidelines. (1) After April 14, 1995, except as provided in subsections (2) through (5) or unless required by state law, the department may not adopt a rule to implement this chapter that is

more stringent than the comparable federal regulations or guidelines that address the same circumstances. The department may incorporate by reference comparable federal regulations or guidelines.

(2) The department may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if the department makes a written finding after a public hearing and public comment and based on evidence in the record that:

(a) the proposed state standard or requirement protects public health or the environment of the state; and

(b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the department's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.

(4) (a) A person affected by a rule of the department adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable federal regulations or guidelines may petition the department to review the rule. If the department determines that the rule is more stringent than comparable federal regulations or guidelines, the department shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The department may charge a petition filing fee in an amount not to exceed $250.

(b) A person may also petition the department for a rule review under subsection (4)(a) if the department adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted department rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1).

History: **En. Sec. 3, Ch. 471, L. 1995.**

75-10-108 and 75-10-109 reserved.

75-10-110. Repealed. Sec. 1, Ch. 273, L. 1993.

History: **En. Sec. 3, Ch. 696, L. 1989.**

75-10-111. State solid waste management and resource recovery plan — hearings. The department shall adopt the solid waste management and resource recovery plan required in 75-10-104 and 75-10-807 according to the rulemaking procedures of the Montana Administrative Procedure Act under Title 2, chapter 4, part 3. The department shall prepare the plan in conjunction with local governments in the state, citizens, solid waste and recycling industries, environmental organizations, and others involved or interested in the management of solid waste. Within 3 days after the notice of proposed rulemaking to adopt the plan is published pursuant to Title 2, chapter 4, part 3, the department shall mail a copy of the notice and the proposed plan to the board of county commissioners in each county in the state, the governing body of every incorporated city or town in the state, any person responsible for the operation of a solid waste management system under the provisions of Title 75, chapter 10, parts 1 and 2, the governor, the environmental quality council in accordance with 5-11-210, and any other interested person. During the period for receipt of comments on the proposed rulemaking concerning the plan, the department shall hold at least one public hearing.

History: **En. 69-4016 by Sec. 6, Ch. 575, L. 1977; R.C.M. 1947, 69-4016; amd. Sec. 3, Ch. 54, L. 2007; amd. Sec. 101, Ch. 261, L. 2021.**

Cross-References

Montana Administrative Procedure Act — rulemaking, Title 2, ch. 4, part 3.

Environmental Quality Council, Title 75, ch. 1, part 3.

75-10-112. Powers and duties of local government. A local government may:

(1) plan, develop, and implement a solid waste management system consistent with the state's solid waste management and resource recovery plan and propose modifications to the state's solid waste management and resource recovery plan;

(2) upon adoption of the state plan, pass an ordinance or resolution to exempt the local jurisdiction from complying with the state plan and subsequent rules implementing the state plan. The ordinance or resolution must include a means to provide solid waste disposal to the citizens of the jurisdiction as required in part 2 of this chapter.

(3) employ appropriate personnel to carry out the provisions of this part;

(4) purchase, rent, or execute leasing agreements for equipment and material necessary for the implementation of a solid waste management system;

(5) cooperate with and enter into agreements with any persons in order to implement an effective solid waste management system;

(6) receive gifts, grants, or donations or acquire by gift, deed, or purchase land necessary for the implementation of any provision of this part;

(7) enforce the rules of the department or a local board of health pertaining to solid waste management through the appropriate county attorney;

(8) apply for and utilize state, federal, or other available money for developing or operating a solid waste management system;

(9) borrow from any lending agency funds available for assistance in planning a solid waste management system;

(10) finance a solid waste management system by:

(a) subject to 15-10-420, fixing the assessment of a tax as authorized by state law; and

(b) as provided in 7-13-4108, fixing and collecting by ordinance or resolution the rates, rentals, and charges for a solid waste management system on system customers;

(11) sell on an installment sales contract or lease to a person all or a portion of a solid waste management system that the local government plans, designs, or constructs for the consideration and upon the terms established by the local governments and consistent with the loan requirements set forth in this part and rules adopted to implement this part;

(12) procure insurance against any loss in connection with property, assets, or activities;

(13) mortgage or otherwise encumber all or a portion of a solid waste management system when the local government finds that the action is necessary to implement the purposes of this part, as long as the action is consistent with the loan requirements set forth in this part and rules adopted to implement this part;

(14) hold or dispose of real property and, subject to agreements with lessors and lessees, develop or alter the property by making improvements or betterments for the purpose of enhancing the value and usefulness of the property;

(15) finance, design, construct, own, and operate a solid waste management system or contract for any or all of the powers authorized under this part;

(16) control the disposition of solid waste generated within the jurisdiction of the local government, except that, in the absence of an imminent threat to public health, safety, or the environment, a local government may not adopt a flow control or similar ordinance to require use of a specific transfer station or landfill for disposal of solid waste;

(17) enter into long-term contracts with local governments and private entities for:

(a) financing, designing, constructing, and operating a solid waste management system;

(b) marketing all raw or processed material recovered from solid waste;

(c) marketing energy products or byproducts resulting from processing or utilization of solid waste;

(18) finance an areawide solid waste management system through the use of any of the sources of revenue available to the implementation entity for public works projects, by the use of revenue bonds issued by the city or county, or by fees levied by a solid waste management district, whichever is appropriate;

(19) enter into interlocal agreements in order to achieve and implement the powers enumerated in this part;

(20) regulate the siting and operation of container sites.

History: En. 69-4017 by Sec. 7, Ch. 575, L. 1977; R.C.M. 1947, 69-4017; amd. Sec. 3, Ch. 145, L. 1993; amd. Sec. 3, Ch. 201, L. 1993; amd. Sec. 136, Ch. 584, L. 1999; amd. Sec. 105, Ch. 2, L. 2009; amd. Sec. 1, Ch. 196, L. 2011; amd. Sec. 2, Ch. 187, L. 2019; amd. Sec. 65, Ch. 324, L. 2021.

Cross-References

County taxation, Title 7, ch. 6, part 25.

Municipal taxation, Title 7, ch. 6, part 44.

75-10-113. User's fee assessed. In the event the revenues of a solid waste management system are insufficient to pay the costs, a local government may levy a pro rata fee against the users of the solid waste management district. The pro rata fee shall be based on a per ton, per pound, or volume assessment.

History: En. 69-4018 by Sec. 8, Ch. 575, L. 1977; R.C.M. 1947, 69-4018(6); amd. Sec. 9, Ch. 68, L. 1979.

75-10-114 reserved.

75-10-115. Solid waste management fee. (1) The department may adopt rules, pursuant to 75-10-104, that set fees for the management and regulation of solid waste at facilities subject to regulation pursuant to part 2 of this chapter. Upon adoption, the department may collect the fees. These fees may include:

(a) a license application fee that reflects the cost of reviewing a new solid waste management system or a substantial change to an existing facility from the time an application is made until the license is issued or denied;

(b) a flat annual license renewal fee that reflects a minimal base fee related to the fixed costs of an annual inspection and license renewal. The initial annual fee year for a new facility commences on the date that the facility initially receives waste. The fee must be based upon the categorization of solid waste management systems into separate classes identified by the following criteria:

(i) the quantity of solid waste received by the solid waste management system;

(ii) the nature of the solid waste received; and

(iii) the nature of the waste management occurring within the solid waste management system.

(c) a tonnage or volume-based fee on solid waste disposal.

(2) All fees collected must be deposited in the solid waste management account provided for in 75-10-117.

History: En. Sec. 1, Ch. 696, L. 1989; amd. Sec. 4, Ch. 643, L. 1991; amd. Sec. 5, Ch. 170, L. 2001; amd. Sec. 1, Ch. 229, L. 2013; amd. Sec. 66, Ch. 324, L. 2021.

75-10-116. Penalties for failure to pay fee. A person who owns a solid waste disposal facility that is subject to the fees under 75-10-115 and who fails to pay the fee in the manner provided by department rule is subject to a fine of not more than $2,000 or imprisonment not to exceed 6 months, or both, and shall reimburse the department for the amount of the fee owed and interest calculated at a rate equal to the previous fiscal year's average rate of return on the board of investments' short-term investment pool.

History: En. Sec. 4, Ch. 696, L. 1989; amd. Sec. 4, Ch. 398, L. 1991; amd. Sec. 4, Ch. 145, L. 1993; amd. Sec. 6, Ch. 170, L. 2001.

75-10-117. Solid waste management account. (1) There is a solid waste management account in the state special revenue fund provided for in 17-2-102.

(2) There must be deposited in the account:

(a) all revenue from the solid waste management fees provided for in 75-10-115; and

(b) money received by the department in the form of legislative appropriations, reimbursements, gifts, federal funds, or appropriations from any source that is intended to be used for the purposes of the account.

(3) The account may be used by the department only for the administration of 75-2-215, part 2 of this chapter, and this part.

History: En. Sec. 2, Ch. 696, L. 1989; amd. Sec. 5, Ch. 398, L. 1991; amd. Sec. 5, Ch. 145, L. 1993; amd. Sec. 7, Ch. 170, L. 2001.

75-10-118. Repealed. Sec. 11, Ch. 170, L. 2001.

History: En. Sec. 1, Ch. 398, L. 1991; amd. Sec. 2, Ch. 273, L. 1993.

75-10-119 and 75-10-120 reserved.

75-10-121. Repealed. Sec. 14, Ch. 405, L. 2003.
History: En. 69-4018 by Sec. 8, Ch. 575, L. 1977; R.C.M. 1947, 69-4018(1), (3); amd. Sec. 10, Ch. 68, L. 1979.

75-10-122. Repealed. Sec. 14, Ch. 405, L. 2003.
History: En. 69-4018 by Sec. 8, Ch. 575, L. 1977; R.C.M. 1947, 69-4018(2).

75-10-123. Repealed. Sec. 14, Ch. 405, L. 2003.
History: En. 69-4020 by Sec. 10, Ch. 575, L. 1977; R.C.M. 1947, 69-4020.

75-10-124. Repealed. Sec. 14, Ch. 405, L. 2003.
History: En. 69-4018 by Sec. 8, Ch. 575, L. 1977; R.C.M. 1947, 69-4018(4), (5), (7).

75-10-125. Repealed. Sec. 14, Ch. 405, L. 2003.
History: En. Sec. 4, Ch. 482, L. 1981.

Part 2
Licensing of Refuse Disposal and Transportation
Montana Solid Waste Management Act

Part Cross-References
Duty to notify weed management district when proposed project will disturb land, 7-22-2152.
Penalties, fees, and interest, Title 75, ch. 1, part 10.

75-10-201. Short title. This part may be cited as "The Montana Solid Waste Management Act".
History: En. 69-4001.1 by Sec. 2, Ch. 542, L. 1977; R.C.M. 1947, 69-4001.1.

75-10-202. Legislative intent, findings, and policy. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Montana Solid Waste Management Act. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) It is hereby found and declared that the health and welfare of Montana citizens are being endangered by improperly operated solid waste management systems and by the improper and unregulated disposal of wastes. It is declared the public policy of this state to control solid waste management systems to protect the public health and safety and to conserve natural resources whenever possible.

History: En. Sec. 1, Ch. 35, L. 1965; amd. Sec. 1, Ch. 542, L. 1977; R.C.M. 1947, 69-4001; amd. Sec. 1, Ch. 358, L. 1981; amd. Sec. 13, Ch. 361, L. 2003.

Cross-References
Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.
Duty to maintain clean and healthful environment, Art. IX, sec. 1, Mont. Const.

75-10-203. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Department" means the department of environmental quality provided for in 2-15-3501.

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any solid waste into or onto the land so that the solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters, including ground water.

(4) "Household hazardous waste" means products commonly used in the home that due to corrosivity, ignitability, reactivity, toxicity, or other chemical or physical properties are dangerous to human health or the environment. Household hazardous waste includes but is not limited to cleaning, home maintenance, automobile, personal care, and yard maintenance products.

(5) "Household waste" means any solid waste derived from households, including single and multiple residences, hotels, and motels, crew quarters, and campgrounds and other public recreation and public land management facilities.

(6) (a) "Municipal solid waste landfill" means any publicly or privately owned landfill or landfill unit that receives household waste or other types of waste, including commercial waste, nonhazardous sludge, and industrial solid waste.

(b) The term does not include land application units, surface impoundments, injection wells, or waste piles.

(7) "Person" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(8) "Resource recovery" means the recovery of material or energy from solid waste.

(9) "Resource recovery facility" means a facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(10) "Resource recovery system" means a solid waste management system that provides for the collection, separation, recycling, or recovery of solid wastes, including disposal of nonrecoverable waste residues.

(11) (a) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage; rubbish; refuse; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials.

(b) Solid waste does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of environmental quality, slash and forest debris regulated under laws administered by the department of natural resources and conservation, or marketable byproducts.

(12) "Solid waste management system" means a system that controls the storage, treatment, recycling, recovery, or disposal of solid waste. For the purposes of this definition, a container site, as defined in 75-10-103, is not a component of a solid waste management system.

(13) "Storage" means the actual or intended containment of wastes, either on a temporary basis or for a period of years.

(14) "Transport" means the movement of wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

(15) "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any solid waste so as to neutralize the waste or so as to render it safer for transport, amenable for recovery, amenable for storage, or reduced in volume.

(16) "Waste tire" means a tire that is no longer suitable for its original intended purpose because of wear, damage, or defect.

History: En. Sec. 2, Ch. 35, L. 1965; amd. Sec. 26, Ch. 349, L. 1974; amd. Sec. 3, Ch. 542, L. 1977; R.C.M. 1947, 69-4002; amd. Sec. 2, Ch. 358, L. 1981; amd. Sec. 3, Ch. 529, L. 1981; amd. Sec. 1, Ch. 677, L. 1989; amd. Sec. 1, Ch. 407, L. 1991; amd. Sec. 2, Ch. 201, L. 1993; amd. Sec. 193, Ch. 418, L. 1995; amd. Secs. 527, 568, Ch. 546, L. 1995; amd. Sec. 1, Ch. 373, L. 1997.

Cross-References

Securing of load — requirement, 61-8-370.

75-10-204. Powers and duties of department. The department shall, subject to the provisions of 75-10-107, adopt rules governing solid waste management systems that must include but are not limited to:

(1) requirements for the plan of operation and maintenance that must be submitted with an application under this part;

(2) the classification of disposal sites according to the physical capabilities of the site to contain the type of solid waste to be disposed of;

(3) the procedures to be followed in the disposal, treatment, or transport of solid wastes;

(4) the suitability of the site from a public health standpoint when hydrology, geology, and climatology are considered;

(5) requirements relating to ground water monitoring, including but not limited to:

(a) information that owners and operators of municipal solid waste landfills and other disposal sites specified in 75-10-207 are required to submit to the department to enable the department to prepare the priority compliance list authorized by 75-10-207(3);

(b) the content of plans for the design, construction, operation, and maintenance of monitoring wells and monitoring systems; and

(c) recordkeeping and reporting;

(6) the imposition of a quarterly fee based on the justifiable direct and indirect costs to the state of administering Title 75, chapter 10, parts 1 and 2, for solid waste generated outside Montana and disposed of or incinerated within Montana;

(7) requirements to maintain financial assurance payable to the state of Montana with a surety satisfactory to the department in an amount sufficient to provide for waste tire treatment, removal, transportation, and disposal, fire suppression, or other measures necessary to protect the environment and the health, safety, and welfare of the public;

(8) requirements for coal combustion residues at electrical generation facilities in order to provide for state implementation of federal legislation or federal environmental protection agency regulations that contain legislative or regulatory requirements pertaining to coal combustion residues and that become effective on or after May 6, 2013; and

(9) any other factors relating to the sanitary disposal or management of solid wastes.

History: En. Sec. 7, Ch. 35, L. 1965; amd. Sec. 3, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 8, Ch. 542, L. 1977; R.C.M. 1947, 69-4007(1); amd. Sec. 3, Ch. 358, L. 1981; amd. Sec. 3, Ch. 677, L. 1989; amd. Sec. 5, Ch. 643, L. 1991; amd. Sec. 3, Ch. 273, L. 1993; amd. Sec. 14, Ch. 471, L. 1995; amd. Sec. 2, Ch. 373, L. 1997; amd. Sec. 8, Ch. 170, L. 2001; amd. Sec. 1, Ch. 411, L. 2013.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

75-10-205. Inspections. The department has continuing authority and responsibility to inspect a solid waste management system under the provisions of this part. Inspections may be conducted only during reasonable hours and only after presentation of appropriate credentials identifying the inspector as a duly authorized employee of the department.

History: En. Sec. 7, Ch. 35, L. 1965; amd. Sec. 3, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 8, Ch. 542, L. 1977; R.C.M. 1947, 69-4007(2).

Cross-References

Searches and seizures — right of private individual to be secure, Art. II, sec. 11, Mont. Const.

75-10-206. Variance. (1) A person may apply to the board for a variance from rules adopted by the department pursuant to 75-10-204, except for rules adopted pursuant to 75-10-204(6). The board may grant a variance if it finds that:

(a) failure to comply with the rules does not result in a danger to public health or safety; or

(b) compliance with the rules from which a variance is sought would produce hardship without producing benefits to the health and safety of the public that outweigh the hardship.

(2) A variance may not be granted pursuant to this section except after a hearing pursuant to the Montana Administrative Procedure Act and consideration by the board of the relative interests of the applicant and owners of the property likely to be affected by the waste disposal system under consideration.

(3) This section may not be construed as relieving the board from the obligation to comply with the Resource Conservation and Recovery Act of 1976, as amended, or as allowing the board to grant a variance less restrictive than that act.

History: En. Sec. 1, Ch. 563, L. 1981; amd. Sec. 4, Ch. 273, L. 1993; amd. Sec. 9, Ch. 170, L. 2001.

Cross-References

Montana Administrative Procedure Act — contested cases, Title 2, ch. 4, part 6.

75-10-207. Ground water monitoring. (1) Owners and operators of municipal solid waste landfills and other disposal sites that at any time accepted household waste, that are in operation as of October 1, 1989, and that serve a geographic area with a population of 5,000 or more persons as determined by the most recent census are required to monitor ground water as specified by the department.

(2) If the owner or operator of a municipal solid waste landfill or other disposal site specified in subsection (1) can demonstrate to the department that there is no potential for migration of constituents from the site that could cause pollution of ground water during the active life of the site, including the closure period, and during postclosure care, the requirement for ground water monitoring specified in subsection (1) does not apply. The information provided to the department to make this demonstration must be certified by a qualified geologist, hydrogeologist, or geotechnical engineer and must include reliable site-specific data.

(3) Based on site-specific information that owners and operators of municipal solid waste landfills and other disposal sites specified in subsection (1) provide to the department, the department shall establish a priority compliance list that identifies those sites where there is the greatest risk that constituents from the sites may cause pollution of ground water, considering:

(a) proximity to current and potential drinking water supplies;

(b) site hydrologic and geologic characteristics; and

(c) age and design of the site.

(4) Owners and operators of municipal solid waste landfills and other disposal sites specified in subsection (1) shall submit proposed plans to the department for accomplishing ground water monitoring, consistent with requirements specified by department rules. The plans may be based on the information owners and operators provide to the department as specified in subsection (3). The department may approve the plans as submitted or require modifications to the plans as necessary to accomplish the purposes of this section.

(5) All sites included on the priority compliance list authorized by subsection (3) must comply with this section by January 1, 1991. All other sites subject to this section must comply by January 1, 1992.

History: En. Sec. 2, Ch. 677, L. 1989.

Cross-References

Water quality, Title 75, ch. 5.

75-10-208. Department rulemaking authority for infectious waste. (1) Except as provided in subsection (2), the department shall adopt rules governing the inspection and regulation of the transportation and management of infectious waste as defined in 75-10-1003.

(2) The department may not adopt rules to regulate:

(a) the generation of infectious waste; or

(b) infectious waste storage or transportation that is regulated under 75-10-1006.

History: En. Sec. 6, Ch. 97, L. 2007.

75-10-209. Repealed. Sec. 11, Ch. 170, L. 2001.

History: En. Sec. 7, Ch. 696, L. 1989; amd. Sec. 1, Ch. 649, L. 1991; amd. Sec. 1, Ch. 524, L. 1993.

75-10-210. Repealed. Sec. 35, Ch. 112, L. 1997.

History: En. Sec. 2, Ch. 16, Sp. L. July 1992.

75-10-211. Repealed. Sec. 30, Ch. 358, L. 1981.

History: En. Sec. 5, Ch. 35, L. 1965; amd. Sec. 2, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 6, Ch. 542, L. 1977; R.C.M. 1947, 69-4005.

75-10-212. Disposal in unauthorized area prohibited — exception. (1) A person may not dispose of solid waste except as permitted under this part.

(2) It is unlawful to dump or leave any garbage, dead animal, or other debris or refuse:

(a) in or upon any highway, road, street, or alley of this state;

(b) in or upon any public property, highway, street, or alley under the control of the state of Montana or any political subdivision of the state or any officer or agent or department of the state or political subdivision of the state;

(c) within 200 yards of a public highway, road, street, or alley or public property;

(d) on privately owned property where hunting, fishing, or other recreation is permitted; however, this subsection does not apply to the owner, the owner's agents, or those disposing of debris or refuse with the owner's consent.

(3) A person in violation of this section is absolutely liable, as provided in 45-2-104, and is subject to the civil penalties provided in 75-10-233.

History: (1)En. Sec. 3, Ch. 35, L. 1965; amd. Sec. 4, Ch. 542, L. 1977; Sec. 69-4003, R.C.M. 1947; (2)En. Sec. 11-110, Ch. 197, L. 1965; amd. Sec. 1, Ch. 112, L. 1969; Sec. 32-4410, R.C.M. 1947; R.C.M. 1947, 32-4410(1), 69-4003; amd. Sec. 4, Ch. 358, L. 1981; amd. Sec. 1, Ch. 461, L. 1991; amd. Sec. 2499, Ch. 56, L. 2009.

Cross-References

Littering on highways prohibited, 61-8-365.

Dumping penalty — enforcement, 75-10-233.

Game wardens — duty to enforce, 87-1-504.

Forfeiture of hunting or fishing license for littering, 87-6-920.

75-10-213. Unlawful disposition of dead animals — exception. It is unlawful to:

(1) place all or any part of a dead animal in any lake, river, creek, pond, reservoir, road, street, alley, lot, or field;

(2) place all or any part of a dead animal within 1 mile of the residence of any person unless the dead animal or part of a dead animal is:

(a) burned or buried at least 2 feet underground; or

(b) placed in an animal composting facility that is licensed under Title 75, chapter 10, part 2; or

(3) being the owner, permit all or any part of a dead animal to remain in the places specified in subsections (1) and (2) except as provided in subsection (2).

History: En. Sec. 95, Ch. 197, L. 1967; R.C.M. 1947, 69-4518; amd. Sec. 11, Ch. 68, L. 1979; amd. Sec. 1, Ch. 243, L. 2009.

Cross-References

Disposition of dead animal in cave unlawful, 23-2-905.

Dead or fallen animals — rendering plants, Title 81, ch. 9, part 3.

75-10-214. Exclusions — exceptions to exclusions. (1) (a) This part may not be construed to prohibit a person from disposing of the person's own solid waste that is generated in reasonable association with the person's household or agricultural operations upon land owned or leased by that person or covered by easement or permit as long as the disposal does not create a nuisance or public health hazard or violate the laws governing the disposal of hazardous or deleterious substances.

(b) Except as provided in 75-10-204(8), this part does not apply to the operation of an electric generating facility, to the drilling, production, or refining of natural gas or petroleum, or to the operation of a mine, mill, smelter, or electrolytic reduction facility.

(2) The exclusions contained in subsection (1) do not apply to a division of land of 5 acres or less made after July 1, 1977, that falls within the definition of subdivision in Title 76, chapter 4, part 1, or the Montana Subdivision and Platting Act in Title 76, chapter 3.

History: En. Sec. 8, Ch. 35, L. 1965; amd. Sec. 4, Ch. 349, L. 1969; amd. Sec. 9, Ch. 542, L. 1977; R.C.M. 1947, 69-4008(1) thru (3), (5); amd. Sec. 12, Ch. 68, L. 1979; amd. Sec. 5, Ch. 358, L. 1981; amd. Sec. 12, Ch. 696, L. 1989; amd. Sec. 1, Ch. 565, L. 1991; amd. Sec. 2500, Ch. 56, L. 2009; amd. Sec. 2, Ch. 411, L. 2013.

Cross-References

Public nuisance, 45-8-111.

75-10-215. Statewide household hazardous waste public education program. The department shall implement a statewide household hazardous waste public education program. The program must include but is not limited to providing information about:

(1) alternatives to disposal of household hazardous waste at municipal solid waste landfills and other disposal sites;

(2) options for recycling or the safe disposal of electronic waste, including but not limited to video, audio, and telecommunications equipment, computers, and household appliances;

(3) methods of reusing or recycling household hazardous waste; and

(4) alternatives to the use of products that lead to the generation of household hazardous waste.

History: En. Sec. 2, Ch. 407, L. 1991; amd. Sec. 1, Ch. 156, L. 2007.

Cross-References

Household hazardous waste defined, 75-10-203.

75-10-216. Waste tire disposal sites — financial assurance required. (1) A solid waste management system licensed pursuant to 75-10-221 for the sole or primary purpose of storage, treatment, processing, or disposal of waste tires is required to provide and maintain financial assurance in accordance with rules of the department.

(2) Financial assurance required by this section must be sufficient to cover the cost of proper management of the waste tires stored at the facility, including but not limited to waste tire treatment, removal, transportation, disposal, fire suppression, or other measures necessary to protect the environment and the health, safety, and welfare of the public. The licensee may elect to provide financial assurance by any one method or a combination of methods satisfactory to the department, including but not limited to insurance, a guarantee, performance, or other surety bond, a letter of credit, qualification as a self-insurer, or other demonstration of financial capability.

(3) The department may require the owner or operator of the facility to modify the terms and conditions of financial assurance provided for the purposes of this section to adjust for changing circumstances at the facility, including but not limited to the number of waste tires accumulated without processing or disposal, availability of alternative waste tire markets, the financial viability of the facility operation, and the estimated costs of waste tire treatment, processing, transportation, and disposal alternatives.

History: En. Sec. 3, Ch. 373, L. 1997.

75-10-217 reserved.

75-10-218. Repealed. Sec. 6, Ch. 145, L. 1993.

History: En. Sec. 6, Ch. 696, L. 1989.

75-10-219 and 75-10-220 reserved.

75-10-221. License required — application. (1) Except as provided in 75-10-214, a person may not dispose of solid waste or operate a solid waste management system without a license from the department.

(2) The department shall provide application forms for a license as provided in this part.

(3) The application must contain the name and business address of the applicant, the location of the proposed solid waste management system, a plan of operation and maintenance, and other information that the department may by rule require.

(4) The license provided for in this section is for a period not to exceed 12 months unless renewed by the department.

(5) The department may require submission of a new application if the department determines that the plan of operation, the management of the solid waste system, or the geological or ground water conditions have changed since the license was initially approved.

(6) In preparing rules that establish fees for licenses and the review of applications pursuant to 75-10-104(2), the department shall consider the tonnage or volume of waste to be managed and the size of the proposed solid waste management system. The fees adopted must encourage reduction in the tonnage or volume of waste to be managed and cover the costs to the department of initially reviewing and annually licensing the solid waste management system.

History: En. Sec. 4, Ch. 35, L. 1965; amd. Sec. 1, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 5, Ch. 542, L. 1977; R.C.M. 1947, 69-4004(1); amd. Sec. 6, Ch. 358, L. 1981; amd. Sec. 6, Ch. 643, L. 1991; amd. Sec. 10, Ch. 170, L. 2001; amd. Sec. 67, Ch. 324, L. 2021.

75-10-222. Notification of and validation by local health officer. (1) When the department receives an application for a license pursuant to the provisions of this part, the local health officer in the county where the solid waste management system will be located shall be notified in writing of the application within 15 days after the department has received the application.

(2) If the department decides to issue a license pursuant to the provisions of this part, the department shall notify the local health officer in writing.

(3) A license issued by the department under this section shall not be valid until signed by the local health officer having jurisdiction in the county in which the solid waste management system will be operated.

(4) The local health officer shall, within 15 days after the department has notified the local health officer of its decision to issue a license under this part, make a final decision on whether the license will be validated.

History: En. Sec. 4, Ch. 35, L. 1965; amd. Sec. 1, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 5, Ch. 542, L. 1977; R.C.M. 1947, 69-4004(part).

75-10-223. Refusal by local health officer — appeal to board. (1) The local health officer may refuse to validate a license issued under this part only upon a finding that the requirements of this part and the rules implementing this part cannot be satisfied. If the local health officer refuses to validate the license, the local health officer shall notify the applicant, the department, and any other interested person in writing.

(2) The applicant or any person aggrieved by the decision of the local health officer not to validate a license may appeal the decision to the board within 30 days after receiving written notice of the local health officer's decision.

(3) The hearing before the board must be held pursuant to the contested case provisions of the Montana Administrative Procedure Act.

History: En. Sec. 4, Ch. 35, L. 1965; amd. Sec. 1, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 5, Ch. 542, L. 1977; R.C.M. 1947, 69-4004(part); amd. Sec. 2501, Ch. 56, L. 2009.

Cross-References

Montana Administrative Procedure Act — contested cases, Title 2, ch. 4, part 6.

75-10-224. Revocation or denial of license by department. The department may deny or revoke a license to operate a solid waste management system after giving the applicant and the local health officer written notice and an opportunity for a hearing before the board. The decision to deny or revoke a license may be made only after a finding that a solid waste management system cannot be operated or is not being operated in compliance with this part or a rule or order issued pursuant to this part. The hearing held before the board on a denial or revocation shall be held pursuant to the provisions of the Montana Administrative Procedure Act.

History: En. Sec. 6, Ch. 35, L. 1965; amd. Sec. 7, Ch. 542, L. 1977; R.C.M. 1947, 69-4006.

Cross-References

Montana Administrative Procedure Act — contested cases, Title 2, ch. 4, part 6.

75-10-225. Repealed. Sec. 30, Ch. 358, L. 1981.

History: En. Sec. 8, Ch. 35, L. 1965; amd. Sec. 4, Ch. 349, L. 1969; amd. Sec. 9, Ch. 542, L. 1977; R.C.M. 1947, 69-4008(4).

75-10-226 reserved.

75-10-227. Administrative enforcement. (1) When the department believes that a violation of part 1 or this part, a violation of a rule adopted under part 1 or this part, a violation of an order issued under this part, or a violation of a permit provision has occurred, it may serve written notice of the violation on the alleged violator or the violator's agent. The notice must specify the provision of law, rule, or permit alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order, an order assessing an administrative penalty pursuant to 75-10-228, or both. The order becomes final unless, within 30 days after the notice is served, the person named requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

(2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it shall either affirm or modify the department's order. An order issued by the department or by the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after a hearing, the board finds that a violation has not occurred, it shall rescind the department's order.

(3) Instead of issuing an order pursuant to subsection (1), the department may either:

(a) require the alleged violator to appear before the board for a hearing at a time and place specified in the notice and answer the charges; or

(b) initiate action under part 1 or this part.

(4) This section does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

(5) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section.

History: En. Sec. 8, Ch. 696, L. 1989; amd. Sec. 1, Ch. 443, L. 2005.

75-10-228. Civil penalties. (1) A person who violates a provision of this part, a rule adopted or an order issued under this part, or a license provision is subject to an administrative penalty not to exceed $250 or a civil penalty not to exceed $1,000. Each day of violation constitutes a separate violation.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. The enforcement or collection action must be brought in the district court of the county in which the violation occurred. Upon request of the department, the attorney general or the county attorney of the county where the violation occurred shall petition the district court to impose, assess, and recover the civil penalty.

(3) Penalties assessed under this section must be determined in accordance with the penalty factors in 75-1-1001.

(4) Fines and penalties collected under this section must be deposited in the solid waste management account provided for in 75-10-117.

History: En. Sec. 9, Ch. 696, L. 1989; (3)En. Sec. 2, Ch. 565, L. 1991; amd. Sec. 9, Ch. 443, L. 2005; amd. Sec. 33, Ch. 535, L. 2021.

75-10-229 and 75-10-230 reserved.

75-10-231. Actions. The department may, through the attorney general or appropriate county attorney, initiate and maintain in district court enforcement actions as provided in this part, including actions to collect a criminal penalty or to enjoin the transportation of solid waste or the operation of a solid waste management system that is in violation of this part or a rule adopted by the department or order issued as provided in this part.

History: En. Sec. 7, Ch. 35, L. 1965; amd. Sec. 3, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 8, Ch. 542, L. 1977; R.C.M. 1947, 69-4007(3); amd. Sec. 1, Ch. 97, L. 2007.

Cross-References

Injunctions — Supreme Court original jurisdiction, 3-2-205.
Injunctions, Title 27, ch. 19.

75-10-232. Penalty for violations. (1) A person violating this part or regulations prescribed by the department under this part, except 75-10-212(2), is guilty of a misdemeanor and upon conviction shall be fined not less than $50 or more than $500.

(2) Each day upon which a violation occurs is a separate violation.

History: Ap. p. Sec. 9, Ch. 35, L. 1965; amd. Sec. 5, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 10, Ch. 542, L. 1977; Sec. 69-4009, R.C.M. 1947; Ap. p. Sec. 96, Ch. 197, L. 1967; amd. Sec. 108, Ch. 349, L. 1974; amd. Sec. 3, Ch. 273, L. 1975; Sec. 69-4519, R.C.M. 1947; R.C.M. 1947, 69-4009, 69-4519(3), (4); amd. Sec. 13, Ch. 68, L. 1979; amd. Sec. 7, Ch. 358, L. 1981.

Cross-References

Execution of criminal fine, 46-19-102.

75-10-233. Dumping penalty — enforcement. (1) A person found guilty of a violation of 75-10-212 shall be fined in the sum not exceeding $500.

(2) A person found absolutely liable under 75-10-212 is subject to a civil penalty not to exceed $5,000.

(3) The provisions of 75-10-212 must be enforced by all highway patrol officers, sheriffs, and police officers and by all other enforcement agencies and officers of the state of Montana. In addition, game wardens have the right to enforce the provisions of 75-10-212 on public property and on private property where public recreation is permitted.

History: En. Sec. 11-110, Ch. 197, L. 1965; amd. Sec. 1, Ch. 112, L. 1969; R.C.M. 1947, 32-4410(2), (3); amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 2, Ch. 461, L. 1991; amd. Sec. 2502, Ch. 56, L. 2009; amd. Sec. 1, Ch. 77, L. 2023.

Cross-References

Local government law enforcement, Title 7, ch. 32.
Highway patrol, Title 44, ch. 1.
Game wardens, Title 87, ch. 1, part 5.

75-10-234. Liability — defense and exclusions. (1) A person has a defense against liability in a tort action for damages suffered as a result of an act or omission that constitutes a violation of this part, a rule adopted under this part, or a condition of a permit or authorization required by a rule adopted under this part if the person can establish by a preponderance of the evidence that:

(a) the person is a government entity that acquired ownership or control through bankruptcy, tax delinquency, abandonment, or lien foreclosure in which the government entity acquired title by virtue of the government entity's authority;

(b) the person has not caused or contributed to the violation; and

(c) the person is making an effort to abate the violation.

(2) For the purposes of this part, "government entity" includes a consolidated city-county, a county, and an incorporated city or town.

History: En. Sec. 2, Ch. 159, L. 2013.

75-10-235 through 75-10-239 reserved.

75-10-240. Disposal of coal combustion residues — cost benefit analysis required. (1) The department shall establish guidelines to compare costs and benefits of continued disposal of coal combustion residues at electrical generation facilities versus economical ways to reuse coal combustion residues.

(2) The guidelines must include requirements for promptly determining when a cost-benefit analysis under this section is appropriate and necessary.

(3) Proposals for analysis under this section must be consistent with the size and scope of the waste disposal options under consideration or at least demonstrate significant quantifiable environmental impacts, economic impacts, or both and meet other beneficial use requirements.

(4) An analysis under this section that favors a beneficial use must be transmitted to the governor. The governor may:

(a) approve the document and order the prompt execution of the proposal;

(b) return the document to the department for suggested revisions and resubmission to the governor; or

(c) deny the proposal.

History: En. Sec. 3, Ch. 553, L. 2021.

75-10-241 through 75-10-249 reserved.

75-10-250. Baled waste tires prohibited — exception — department rules. (1) Waste tires that are mechanically compressed or baled and bound together with cable, straps, wires, or other nonpermanent mechanical devices may not be used for any aboveground purpose within 500 feet of any road, commercial business, or private residence without the consent of the owner of the business or residence unless they are encased in a material that will maintain the integrity of the bale upon failure of the bale restraining devices. Notwithstanding any other provision of law, the department shall adopt rules authorizing other aboveground uses for baled waste tires, whether or not they are defined as solid waste.

(2) Baled waste tires, as described in subsection (1), may not be placed under water under any circumstances or in a location where they are likely to enter any state waters.

(3) A bale of waste tires that loses its integrity is solid waste and is subject to disposal requirements and penalties as provided in this part.

History: En. Sec. 1, Ch. 580, L. 2003.

Part 3
Detachable Beverage Container Openers (Repealed)

75-10-301. Repealed. Sec. 1, Ch. 144, L. 2023.

History: En. Sec. 1, Ch. 185, L. 1981.

75-10-302. Repealed. Sec. 1, Ch. 144, L. 2023.

History: En. Sec. 2, Ch. 185, L. 1981.

75-10-303. Repealed. Sec. 1, Ch. 144, L. 2023.

History: En. Sec. 3, Ch. 185, L. 1981.

Part 4
Hazardous Waste Management

Part Cross-References

Penalties, fees, and interest, Title 75, ch. 1, part 10.
Hazardous waste/CERCLA special revenue account — bonds, 75-10-621 through 75-10-623.
Licensing of underground storage tank installers, Title 75, ch. 11, part 2.
Petroleum storage tank cleanup, Title 75, ch. 11, part 3.

75-10-401. Short title. This part shall be known and may be cited as the "Montana Hazardous Waste Act".

History: En. Sec. 8, Ch. 358, L. 1981; amd. Sec. 1, Ch. 384, L. 1989; amd. Sec. 17, Ch. 112, L. 1997.

75-10-402. Intent, findings, and purpose. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Hazardous Waste Act. It is the legislature's intent that the requirements of this

part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) The legislature finds that the safe and proper management of hazardous wastes and used oil, the permitting of hazardous waste facilities, and the siting of facilities are matters for statewide regulation and are environmental issues that should properly be addressed and controlled by the state rather than by the federal government.

(3) It is the purpose of this part and it is the policy of this state to protect the public health and safety, the health of living organisms, and the environment from the effects of the improper, inadequate, or unsound management of hazardous wastes and used oil; to establish a program of regulation over used oil and the generation, storage, transportation, treatment, and disposal of hazardous wastes; to ensure the safe and adequate management of hazardous wastes and used oil within this state; and to authorize the department to adopt, administer, and enforce a hazardous waste program pursuant to the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 through 6987), as amended.

History: En. Sec. 9, Ch. 358, L. 1981; amd. Sec. 2, Ch. 384, L. 1989; amd. Sec. 1, Ch. 386, L. 1989; amd. Sec. 1, Ch. 28, L. 1995; amd. Sec. 18, Ch. 112, L. 1997; amd. Sec. 14, Ch. 361, L. 2003.

Cross-References

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.

Duty to maintain clean and healthful environment, Art. IX, sec. 1, Mont. Const.

75-10-403. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Department" means the department of environmental quality provided for in 2-15-3501.

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any hazardous waste into or onto the land or water so that the hazardous waste or any constituent of the hazardous waste may enter the environment or be emitted into the air or discharged into any waters, including ground water.

(4) "Environmental protection law" means a law contained in or an administrative rule adopted pursuant to Title 75, chapter 2, 5, 10, or 11.

(5) "Facility" or "hazardous waste management facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units.

(6) "Generation" means the act or process of producing waste material.

(7) "Generator" means any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation under this part.

(8) (a) "Hazardous waste" means a waste or combination of wastes that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may:

(i) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(ii) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed.

(b) Hazardous wastes do not include those substances governed by Title 82, chapter 4, part 2.

(9) "Hazardous waste management" means the management of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.

(10) "Hazardous waste transfer facility" means any land, structure, or improvement, including loading docks, parking areas, holding sites, and other similar areas, used for the transfer and temporary storage of hazardous wastes and where shipments of hazardous waste are temporarily held for a period of 10 days or less during the normal course of transportation up to but not including the point of ultimate treatment, storage, or disposal.

(11) "Manifest" means the shipping document that is originated and signed by the generator and that is used to identify the hazardous waste and its quantity, origin, and destination during its transportation.

(12) "Person" means the United States, an individual, firm, trust, estate, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(13) "Remediation waste" means, for the purposes of fee assessment only, all hazardous waste, debris, and media, including ground water, surface water, soils, and sediments, that are managed for implementing cleanup.

(14) "Storage" means the actual or intended containment of hazardous wastes, either on a temporary basis or for a period of years.

(15) "Transportation" means the movement of hazardous wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

(16) "Transporter" means a person engaged in the offsite transportation of hazardous waste by air, rail, highway, or water.

(17) "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize the waste or so as to render it nonhazardous, safer for transportation, amenable for recovery, amenable for storage, or reduced in volume.

(18) "Used oil" means any oil that has been refined from crude oil or any synthetic oil, either of which has been used and as a result of that use is contaminated by physical or chemical impurities.

History: **En. Sec. 10, Ch. 358, L. 1981; amd. Sec. 1, Ch. 633, L. 1985; amd. Sec. 1, Ch. 562, L. 1987; amd. Sec. 3, Ch. 384, L. 1989; amd. Sec. 2, Ch. 28, L. 1995; amd. Sec. 1, Ch. 218, L. 1995; amd. Sec. 194, Ch. 418, L. 1995; amd. Secs. 528, 568, Ch. 546, L. 1995; amd. Sec. 1, Ch. 568, L. 1995; amd. Sec. 19, Ch. 112, L. 1997; amd. Sec. 1, Ch. 156, L. 1997; amd. Sec. 1, Ch. 360, L. 2015.**

75-10-404. Powers of department. (1) The department may:

(a) administer and enforce the provisions of this part, rules implementing this part, and orders and permits issued pursuant to this part;

(b) conduct and publish studies on hazardous wastes and hazardous waste management;

(c) initiate, conduct, and support research, demonstration projects, and investigation, as its resources may allow, and coordinate state agency research programs pertaining to hazardous waste management;

(d) accept and administer grants from the federal government and from other sources, public and private; and

(e) abate public nuisances that affect the public health and welfare or the environment and that arise from or in connection with the past or present handling or disposal of any hazardous waste.

(2) The department shall integrate all provisions of this part with other laws administered by the department to avoid unnecessary duplication. Furthermore, the department shall coordinate its activities under this part with the program administered by the department of agriculture under the Montana Pesticides Act, the programs administered by the department of environmental quality related to mining and mine reclamation, the program administered by the department of public service regulation related to hazardous material transportation, and provisions of the Montana Major Facility Siting Act. The integration and coordination must be effected only to the extent that it can be done in a manner consistent with the goals and policies of this part and the other laws referred to in this section.

History: **En. Sec. 11, Ch. 358, L. 1981; amd. Sec. 2, Ch. 386, L. 1989; amd. Sec. 195, Ch. 418, L. 1995; amd. Sec. 20, Ch. 112, L. 1997.**

Cross-References

Montana Major Facility Siting Act, Title 75, ch. 20.

75-10-405. Administrative rules. (1) The department may, subject to the provisions of 75-10-107, adopt, amend, or repeal rules governing hazardous waste and used oil, including but not limited to the following:

(a) identification and classification of those hazardous wastes that are subject to regulation and those that are not;

(b) requirements for the proper treatment, storage, transportation, and disposal of hazardous waste;

(c) requirements for siting, design, operation, maintenance, monitoring, inspection, closure, postclosure, and reclamation of hazardous waste management facilities;

(d) requirements for the issuance, denial, reissuance, modification, and revocation of permits for hazardous waste management facilities;

(e) requirements for corrective action within and outside facility boundaries and for financial assurance of that corrective action;

(f) requirements for manifests and the manifest system for tracking hazardous waste and for reporting and recordkeeping by generators, transporters, and owners and operators of hazardous waste management facilities;

(g) requirements for training of facility personnel, for financial assurance of facility owners and operators, and for liability of guarantors providing financial assurance;

(h) requirements for registration of generators and transporters;

(i) establishing a schedule of fees and procedures for the collection of fees for:

(i) the filing and review of hazardous waste management facility permits as provided in 75-10-432;

(ii) hazardous waste management as provided in 75-10-433;

(iii) the reissuance and modification of hazardous waste management facility permits; and

(iv) the registration of hazardous waste generators. Fees imposed for a facility or a site as a result of the generation of remediation waste may not exceed $25,000 annually.

(j) a schedule of fees to defray a portion of the costs of establishing, operating, and maintaining any state hazardous waste management facility authorized by 75-10-412;

(k) requirements for availability to the public of information obtained by the department regarding facilities and sites used for the treatment, storage, and disposal of hazardous wastes;

(l) procedures for the assessment of administrative penalties as authorized by 75-10-424;

(m) identification and classification of used oil that is subject to regulation and used oil that is not subject to regulation;

(n) requirements for the proper management of used oil; and

(o) other rules that are necessary to obtain and maintain authorization under the federal program.

(2) Notwithstanding the provisions of 75-10-107, the department may not adopt rules under this part that are more restrictive than those promulgated by the federal government under the Resource Conservation and Recovery Act of 1976, as amended, except that the department:

(a) may require the registration of transporters not otherwise required to register with the state of Montana pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended;

(b) may require hazardous waste generators and hazardous waste management facilities to report on an annual rather than on a biennial basis;

(c) may adopt regulatory requirements for hazardous waste transfer facilities;

(d) shall require the owner or manager of any proposed commercial facility for the storage, collection, or transfer of hazardous waste to conduct a public hearing, as provided for in 75-10-441; and

(e) may adopt rules and performance standards for industrial furnaces and boilers that burn hazardous wastes. The rules and performance standards:

(i) may be adopted if there are no federal regulations; or

(ii) may be more restrictive than federal regulations.

History: En. Sec. 12, Ch. 358, L. 1981; amd. Sec. 1, Ch. 255, L. 1983; amd. Sec. 1, Ch. 107, L. 1985; amd. Sec. 1, Ch. 109, L. 1985; amd. Sec. 2, Ch. 633, L. 1985; amd. Sec. 1, Ch. 336, L. 1987; amd. Sec. 2, Ch. 340, L. 1987; amd. Sec. 2, Ch. 562, L. 1987; amd. Sec. 4, Ch. 384, L. 1989; amd. Sec. 1, Ch. 400, L. 1991; amd. Sec. 1, Ch. 706, L. 1991; amd. Sec. 1, Ch. 281, L. 1993; amd. Sec. 1, Ch. 341, L. 1993; amd. Sec. 1, Ch. 509, L. 1993; amd. Sec. 3, Ch. 28, L. 1995; amd. Sec. 15, Ch. 471, L. 1995; amd. Sec. 21, Ch. 112, L. 1997; amd. Sec. 2, Ch. 360, L. 2015.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

75-10-406. Permits. (1) A person may not construct or operate a hazardous waste management facility without first obtaining a permit from the department for the facility, except that the department may, by rule, prescribe conditions under which specified hazardous wastes or specified quantities of hazardous waste may be disposed of at solid waste disposal sites licensed by the department pursuant to Title 75, chapter 10, part 2.

(2) Any person who wishes to construct or operate a hazardous waste management facility shall apply to the department for a permit on forms provided by the department. An application must contain, at a minimum, the name and business address of the applicant, the location of the proposed facility, a plan of operation and maintenance, and a description of pertinent site characteristics.

(3) A permit may be issued for a period specified by the department and is subject to renewal by the department upon a showing that the facility has been operated in accordance with the terms of the permit and the rules applicable to the facility and in compliance with the provisions of this part and any applicable order of the board or department.

(4) Any permit issued is subject to revocation by the department for failure of the permittee to comply with the terms and conditions of the permit, the department rules, an order of the board or the department, or the provisions of this part. Any person who is denied a permit by the department or who has a permit revoked or modified shall be afforded an opportunity for a hearing before the board upon written application made within 30 days after service of notice of denial, revocation, or modification by mail. Service by mail is complete upon mailing.

(5) Notwithstanding any other provisions of this part, the department may, in the event of an imminent and substantial danger to public health or the environment, issue a temporary emergency permit to any person for treatment, storage, or disposal of hazardous waste or to any facility to handle hazardous waste not covered by the existing facility permit. Emergency permits may be oral or written, may not exceed 90 days in duration, and may be terminated by the department at any time prior to 90 days.

(6) The department may, as it considers appropriate, grant permits by rule to classes or categories of hazardous waste management facilities where the facility owner or operator is already licensed or permitted by the department pursuant to other state environmental statutes or where an interim period exists until final administrative disposition of a permit application is made.

(7) In permits issued under this section, the department shall require corrective action for all releases of hazardous waste or constituents at a treatment, storage, or disposal facility, including corrective action for releases that extend beyond the facility boundaries if necessary to protect public health or the environment. A permit must contain a schedule of compliance for corrective action and requirements for assurance of financial responsibility for completion of the corrective action.

(8) Each permit issued by the department to a person owning or operating a facility must contain the terms and conditions the department considers necessary to protect human health and the environment.

History: En. Sec. 13, Ch. 358, L. 1981; amd. Sec. 2, Ch. 336, L. 1987; amd. Sec. 3, Ch. 386, L. 1989.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4, part 6.

Corrective action orders — judicial action, 75-10-425.

75-10-407. Concurrent permit and major facility siting decisions. If it is determined that an application for a certificate under the Montana Major Facility Siting Act, Title 75, chapter 20, will result in the generation, transportation, storage, or disposal of hazardous wastes as defined in 75-10-403, the department shall conduct its review under the provisions of this part concurrently with the studies of air and water quality conducted under the provisions of the Montana Major Facility Siting Act. A decision to grant or deny a permit for the treatment, storage, or disposal of hazardous wastes under the provisions of 75-10-406 is appealable concurrently with and subject to the same procedures established for the appeal of the department's air and water quality certification decision under the Montana Major Facility Siting Act. If the initial permit has been granted as specified in this section, all renewals or modifications of a permit or enforcement actions concerning alleged violations of the permit

and the provisions of this part shall be conducted pursuant to the procedures and enforcement provisions established in this part.

History: En. Sec. 14, Ch. 358, L. 1981.

75-10-408. Variances — renewals. (1) A person who is a generator or transporter of hazardous wastes or who owns or operates a hazardous waste management facility may apply to the board for a variance or partial variance from the application of or compliance with any requirement of this part or any rule adopted under this part. The board may grant a variance or partial variance if it finds that:

(a) the applicant's actions or proposed actions regarding generation, transportation, treatment, storage, or disposal of hazardous wastes do not constitute a danger to public health or safety or cause substantially adverse environmental effects; and

(b) the application of or compliance with the requirement or rule would produce unreasonable hardship without equal or greater benefits to the public.

(2) No variance or partial variance may be granted except after public hearing on due notice and until the board has considered the relative interests of the applicant, other persons specifically affected, and the general public.

(3) No variance or partial variance may be granted for a period to exceed 1 year, but the variance or partial variance may be renewed for like periods if no complaint is made to the board because of it or if, after the complaint has been made and duly considered at a public hearing held by the board on due notice, the board finds that renewal is justified. No renewal may be granted except on application therefor. An application for renewal shall be made in the manner and upon such notice as specified in rules promulgated under this part. A renewal pursuant to this subsection shall be on the same grounds and subject to the same limitations and requirements as provided in subsection (1).

(4) A variance, partial variance, or renewal thereof is not a right of the applicant or holder thereof but shall be granted at the discretion of the board. However, a person adversely affected by a variance, partial variance, or renewal granted by the board may obtain judicial review thereof as provided by the judicial review of contested case provisions of the Montana Administrative Procedure Act.

(5) Nothing in this section and no variance, partial variance, or renewal granted pursuant to this section may be construed to prevent or limit the application of the emergency provisions and procedures of 75-10-415.

(6) Under no conditions may a variance be granted by the board that would result in a less stringent requirement or degree of control than would be imposed by the applicable federal regulations adopted under the federal Resource Conservation and Recovery Act.

History: En. Sec. 15, Ch. 358, L. 1981.

Cross-References

Montana Administrative Procedure Act — contested cases, Title 2, ch. 4, part 6.

75-10-409. Compliance monitoring and reporting. (1) The department may, as a condition of a permit, require the owner or operator of a facility to install equipment, collect and analyze samples, and maintain records in order to monitor and demonstrate compliance with this part, rules adopted under this part, any order of the board or department, and permit conditions.

(2) The department may require the owner or operator of a facility to submit reports on the compliance monitoring activities, including notice to the department of any noncompliance with permit conditions, rules adopted under this part, the provisions of this part, or any orders of the department or board.

History: En. Sec. 16, Ch. 358, L. 1981; amd. Sec. 3, Ch. 633, L. 1985; amd. Sec. 22, Ch. 112, L. 1997.

75-10-410. Inspections — sampling. (1) (a) An employee or agent of the department, at any reasonable time and upon presentation of credentials, may enter upon and inspect any property, premises, or place at which:

(i) hazardous wastes are or have been generated, stored, treated, disposed of, or loaded for transportation;

(ii) used oil is or has been generated, stored, treated, disposed of, or loaded for transportation; or

(iii) records pertinent to the used oil or hazardous waste activities are maintained.

(b) The employee or agent of the department may have access to and may copy any records relating to the used oil or hazardous wastes for the purposes of developing rules under this part or enforcing the provisions of this part, rules adopted under this part, or a permit or an order issued under this part.

(2) In the course of an inspection under this section, the employee or agent of the department may take samples of any substances, used oil, or wastes, including samples from any soil or ground water or from any vehicle in which used oil or wastes are transported, or samples of any containers or labeling for the substances, used oil, or wastes. If the employee or agent of the department takes a sample of any used oil, hazardous waste, or suspected hazardous waste, the employee or agent shall, prior to leaving the premises, give to the owner, operator, or agent in charge a receipt describing the sample taken and, if requested, a portion of each sample equal in volume or weight to the portion retained. If any analysis is made of the samples, a copy of the results of the analysis must be furnished to the owner, operator, or agent in charge.

History: En. Sec. 17, Ch. 358, L. 1981; amd. Sec. 5, Ch. 384, L. 1989; amd. Sec. 4, Ch. 28, L. 1995; amd. Sec. 23, Ch. 112, L. 1997.

Cross-References

Searches and seizures — right of private individual to be secure, Art. II, sec. 11, Mont. Const.

75-10-411. Hazardous waste site inventory. (1) The department is authorized to conduct an inventory of sites and locations in the state where hazardous wastes have been stored or disposed of at any time.

(2) If the department determines that the presence of a hazardous waste or the release of the waste or any waste constituent may present a substantial hazard to the public health or the environment, it may issue an order requiring the owner or operator of the facility or site to conduct reasonable monitoring, testing, analysis, and reporting with respect to the site in order to ascertain the nature and extent of the hazard.

(3) In the case of any facility or site not in operation at the time that a determination is made under subsection (2) with respect to the facility or site, if the department finds that the owner of the facility or site could not reasonably be expected to have actual knowledge of the presence of hazardous waste at the facility or site and of its potential for release, it may issue an order requiring the most recent previous owner or operator of the facility or site who could reasonably be expected to have actual knowledge to carry out the actions referred to in subsection (2).

(4) An order issued under subsection (2) or (3) must require that the person to whom the order is issued submit to the department within 30 days a proposal for carrying out the required monitoring, testing, analysis, and reporting.

(5) If the department determines that the owner or operator referred to in subsection (2) or (3) is not able to conduct monitoring, testing, and analysis in a satisfactory manner, the department may conduct the activities.

(6) For the purposes of carrying out this section, the department may exercise the powers set forth in 75-10-410.

History: En. Sec. 18, Ch. 358, L. 1981; amd. Sec. 6, Ch. 384, L. 1989; amd. Sec. 4, Ch. 386, L. 1989; amd. Sec. 24, Ch. 112, L. 1997.

75-10-412. State hazardous waste management facilities. (1) The department may:

(a) if it considers such action to be necessary, establish, maintain, and operate state hazardous waste management facilities to provide for the treatment, storage, or disposal of hazardous wastes;

(b) acquire interests in real property by gift, purchase, lease, or other means in order to develop any such facility;

(c) operate and maintain such a facility directly or through agreement with public or private persons; and

(d) collect reasonable fees to defray a portion of the costs of establishing, maintaining, and operating the facility.

(2) A state facility must meet all applicable requirements for a hazardous waste management facility under this part.

History: En. Sec. 19, Ch. 358, L. 1981; amd. Sec. 2, Ch. 107, L. 1985.

75-10-413. Administrative enforcement. (1) When the department believes that a violation of this part, a rule adopted under this part, or a permit provision has occurred, it may serve written notice of the violation personally or by certified mail on the alleged violator or the violator's agent. The notice must specify the provision of this part, the rule, or the permit provision alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order. The order becomes final unless, within 30 days after the notice is served, the person named requests, in writing, a hearing before the board. On receipt of the request, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

(2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it shall either affirm or modify the department's order. An order issued by the department or by the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after hearing, the board finds that a violation has not occurred, it shall rescind the department's order.

(3) In addition to or instead of issuing an order pursuant to subsection (1), the department may:

(a) require the alleged violator to appear before the board or department, by subpoena or subpoena duces tecum, for a hearing at a time and place specified in the notice to answer the charges complained of or to provide information regarding the alleged violation or its actual or potential impact on public health and welfare or the environment; or

(b) initiate action under 75-10-414, 75-10-417, or 75-10-418.

(4) In the case of disobedience of any subpoena issued and served under this section or of the refusal of any witness to testify as to any material matter with regard to which the witness may be interrogated in a hearing or investigation before the board or the department, the board or department may apply to any district court in the state for an order to compel compliance with the subpoena or the giving of testimony. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified, the court shall enter an order requiring compliance. Disobedience of the order is punishable by contempt of court in the same manner and by the same procedures as is provided for like conduct committed in the course of civil actions in district court.

(5) This section does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

History: En. Sec. 20, Ch. 358, L. 1981; amd. Sec. 5, Ch. 386, L. 1989; amd. Sec. 2, Ch. 281, L. 1993; amd. Sec. 25, Ch. 112, L. 1997.

Cross-References

Montana Administrative Procedure Act — judicial review, Title 2, ch. 4, part 7.
Corrective action orders — judicial action, 75-10-425.

75-10-414. Injunctions. The department may institute and maintain in the name of the state actions for injunctive relief as provided in Title 27, chapter 19, to:

(1) immediately restrain any person from engaging in any unauthorized activity which is endangering or causing damage to public health or the environment;

(2) enjoin a violation of this part, a rule adopted under this part, an order of the department or the board, or a permit provision without the necessity of prior revocation of the permit; or

(3) require compliance with this part, a rule adopted under this part, an order of the department or the board, or a permit provision.

History: En. Sec. 21, Ch. 358, L. 1981; amd. Sec. 1, Ch. 108, L. 1985.

Cross-References

Injunctions — Supreme Court jurisdiction, 3-2-205.
Injunctions, Title 27, ch. 19.
Corrective action orders — judicial action, 75-10-425.

75-10-415. Imminent hazard. Upon receipt of evidence that the handling, storage, treatment, transportation, or disposal of any used oil or hazardous waste may present an imminent and substantial danger to the public health or the environment, the department may commence legal proceedings to immediately restrain or enjoin any person (including any past or present generator, past or present transporter, and past or present owner or operator of a treatment, storage, or disposal facility) who has contributed to or who is contributing to the handling, storage, treatment, transportation, or disposal from engaging in these activities

or order the person to take other action as may be necessary, or both. The department may also take appropriate action as may be necessary under this section, including issuing orders necessary or appropriate to protect the public health and the environment.

History: En. Sec. 22, Ch. 358, L. 1981; amd. Sec. 7, Ch. 384, L. 1989; amd. Sec. 6, Ch. 386, L. 1989; amd. Sec. 5, Ch. 28, L. 1995; amd. Sec. 26, Ch. 112, L. 1997.

Cross-References

Corrective action orders — judicial action, 75-10-425.

75-10-416. Cleanup orders. The department may issue a cleanup order to any person who has discharged, deposited, or spilled any used oil or hazardous waste into or onto any land or water in an unlawful or unapproved manner or who has discharged, deposited, or spilled any material or substance into or onto any land or water so as to result in unlawful or unapproved disposal of used oil or hazardous waste. The order must direct the person to clean up and remove the used oil or hazardous waste, to treat the used oil or hazardous waste so as to render it nonhazardous, or to take other actions as may be considered reasonable by the department.

History: En. Sec. 23, Ch. 358, L. 1981; amd. Sec. 8, Ch. 384, L. 1989; amd. Sec. 6, Ch. 28, L. 1995; amd. Sec. 27, Ch. 112, L. 1997.

75-10-417. Civil penalties. (1) A person who violates any provision of this part, a rule adopted under this part, an order of the department or the board, or a permit is subject to a civil penalty not to exceed $10,000 for each violation. Each day of violation constitutes a separate violation. Penalties assessed under this section must be determined in accordance with the penalty factors in 75-1-1001.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty. An action to recover penalties must be brought in the district court of the county in which the violation occurred.

(3) Action under this section does not bar:

(a) enforcement of this part, rules adopted under this part, orders of the department or the board, or permits by injunction or other appropriate remedy; or

(b) action under 75-10-418.

(4) Money collected under this section must be deposited in the state general fund.

History: En. Sec. 24, Ch. 358, L. 1981; amd. Sec. 1, Ch. 150, L. 1985; amd. Sec. 7, Ch. 386, L. 1989; amd. Sec. 14, Ch. 487, L. 2005; amd. Sec. 34, Ch. 535, L. 2021.

Cross-References

Injunctions, Title 27, ch. 19.

75-10-418. Criminal penalties. (1) A person is guilty of an offense under this section if the person knowingly:

(a) transports any hazardous waste to an unpermitted facility;

(b) treats, stores, or disposes of hazardous waste subject to regulation under this part or the rules adopted under this part without a permit or contrary to a material permit condition;

(c) omits material information or makes any false statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for compliance with provisions of this part or rules adopted under this part pertaining to the handling of hazardous waste;

(d) generates, stores, treats, transports, disposes of, or otherwise handles any used oil or hazardous waste regulated under this part or rules adopted under this part and knowingly destroys, alters, conceals, or fails to file any record, application, manifest, report, or other document required to be maintained or filed in compliance with the provisions of this part, an order issued under this part, or rules adopted under this part; or

(e) transports or causes to be transported without a manifest any hazardous waste required to be accompanied by a manifest.

(2) A person who is guilty of an offense under subsection (1) is subject to a fine of not more than $25,000 per violation or imprisonment for a period not to exceed 3 years, or both. Each day of violation constitutes a separate violation.

(3) A person who knowingly violates any requirement of this part or any rule or material permit condition issued pursuant to this part (except those violations specified in subsection (1))

regarding any hazardous waste that is subject to regulation is guilty of an offense and subject to a fine of up to $5,000 per violation or subject to imprisonment not to exceed 6 months, or both. Each day of violation constitutes a separate violation.

(4) Upon a second conviction for a violation of this section, the maximum penalties specified in this section must be doubled.

(5) Action under this section does not bar enforcement of this part, rules made under this part, orders of the department or the board, or permits by injunction or other appropriate remedy.

(6) Money collected under this section, except money collected in a justice's court, must be deposited in the state general fund.

History: En. Sec. 25, Ch. 358, L. 1981; amd. Sec. 45, Ch. 557, L. 1987; amd. Sec. 8, Ch. 386, L. 1989; amd. Sec. 7, Ch. 28, L. 1995.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.
Injunctions, Title 27, ch. 19.
Execution of criminal fine, 46-19-102.

75-10-419. Department designated agency for federal program participation — interstate cooperation. (1) The department is designated as the official agency for the state for all purposes of the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 through 6987), as amended, and for the purpose of such other state or federal legislation as has or may be enacted after October 1, 1981, to assist in the management of hazardous wastes.

(2) The legislature of this state encourages cooperative activities by the department with other states for the improved management of hazardous wastes and, so far as is practicable, encourages the adoption of uniform state laws relating to the management of hazardous wastes and compacts between this and other states for the improved management of hazardous wastes. The department may enter into agreements with the responsible authorities of the United States and of other states, subject to approval by the governor, relative to policies, methods, means, and procedures to be employed in the management of hazardous wastes not inconsistent with the provisions of this part and may carry out the agreements.

History: En. Sec. 26, Ch. 358, L. 1981.

75-10-420. Venue for legal actions. All legal actions affecting hazardous waste management facilities in the state must be brought in the county in which the facility is located or is proposed to be located.

History: En. Sec. 27, Ch. 358, L. 1981; amd. Sec. 9, Ch. 384, L. 1989; amd. Sec. 28, Ch. 112, L. 1997; amd. Sec. 15, Ch. 361, L. 2003.

75-10-421. Construction in event of conflict — remedies cumulative. (1) The provisions of this part and rules promulgated pursuant to this part govern if they conflict with other provisions of Montana law or any action taken by the department under such provisions.

(2) The remedies provided for in this part are cumulative with other remedies provided by law.

History: En. Sec. 28, Ch. 358, L. 1981.

75-10-422. Unlawful disposal. It is unlawful to dispose of used oil or hazardous waste, as defined in this part or by rule, without a permit or, if a permit is not required under this part or rules adopted under this part, by any other means not authorized by law.

History: En. Sec. 9, Ch. 386, L. 1989; amd. Sec. 8, Ch. 28, L. 1995.

75-10-423. Renumbered 75-11-525. Sec. 36(2), Ch. 112, L. 1997.

75-10-424. Administrative penalty. (1) The department may assess a person who violates a provision of this part or a rule adopted under this part an administrative penalty, not to exceed $10,000 for each violation. Each day of violation constitutes a separate violation, but the maximum penalty may not exceed $100,000 for any related series of violations. Assessment of an administrative penalty under this section must be made in conjunction with an order or administrative action authorized by this chapter.

(2) An administrative penalty may not be assessed under this section unless the alleged violator is given notice and opportunity for a hearing before the board pursuant to Title 2, chapter 4, part 6.

(3) In determining the appropriate amount of an administrative penalty, the department shall consider the penalty factors in 75-1-1001.

(4) If the department is unable to collect the administrative penalty or if a person fails to pay all or any portion of the administrative penalty as determined by the department, the department may file an action to recover the amount not paid. The action must be brought in the district court of the county in which the violation occurred.

(5) Action under this section does not bar action under 75-10-413 through 75-10-418 or any other appropriate remedy.

(6) Administrative penalties collected under this section must be deposited in the state general fund.

History: **En. Sec. 2, Ch. 509, L. 1993; amd. Sec. 9, Ch. 28, L. 1995; amd. Sec. 31, Ch. 112, L. 1997; amd. Sec. 15, Ch. 487, L. 2005; amd. Sec. 35, Ch. 535, L. 2021.**

75-10-425. Corrective action orders — judicial action. Whenever, on the basis of any information, the department determines and verifies that there is or has been a release of hazardous waste or constituents into the environment from any facility that treats, stores, or disposes of hazardous waste, whether or not the facility is authorized to operate under 75-10-406, the department may:

(1) commence a civil action for appropriate relief, including injunctive relief, in the district court in the district in which the facility is located; or

(2) issue an order requiring corrective action or any other response measure that the department considers necessary to protect human health or the environment. An order may include a suspension or revocation of authorization to operate under 75-10-406. An order must state with reasonable specificity the nature of the required corrective action or other response measure and must specify a time for compliance.

History: **En. Sec. 1, Ch. 425, L. 1999.**

Cross-References

Contested cases, Title 2, ch. 4, part 6.

Injunctions, Title 27, ch. 19.

75-10-426. Disclosure statement required. (1) Subject to the provisions of subsection (4), a permit that is required for a hazardous waste management facility under 75-10-406 may not be issued, reissued, renewed, or modified without the filing of a disclosure statement as required under this section. Before an application for the issuance, reissuance, renewal, or modification of a permit under 75-10-406 for a hazardous waste management facility may be approved, the applicant shall submit to the department a disclosure statement containing the following information:

(a) the name, business address, and social security number of the applicant;

(b) a description of any civil complaint filed and administrative enforcement action taken within 5 years before the date of the application against the applicant for the violation of an environmental protection law and a statement regarding whether the complaint or action resulted in a civil or administrative penalty;

(c) a description of all judgments of criminal conviction entered against the applicant for the violation of an environmental protection law within 5 years before the date of the application; and

(d) a description of all judgments of criminal conviction for activities directly associated with a hazardous waste management facility entered against the applicant for the violation of an environmental protection law of another state within 5 years before the date of the application. For the purposes of this subsection (d), "environmental protection law of another state" means a law or administrative rule adopted pursuant to a law:

(i) regulating solid or hazardous waste or underground storage tanks; or

(ii) protecting the air or water resource.

(2) A disclosure statement, as required in subsection (1), must be executed under oath or affirmation and is subject to the penalty for perjury. The department may verify and investigate the information contained in a disclosure statement required under this section.

(3) A person required to file a disclosure statement under this section shall provide assistance or information requested by the department that is related to the statement and shall cooperate in an inquiry or investigation conducted by the department under subsection (2).

(4) (a) This section does not apply to the issuance of a temporary emergency permit under 75-10-406(5) or to the modification of a permit that does not reflect a change in the owner or operator of the hazardous waste management facility.

(b) A person is not required to comply with the provisions of 75-10-427 or this section for:

(i) the reissuance, renewal, or modification of a valid hazardous waste management facility permit issued prior to January 1, 1995; or

(ii) an application for a new hazardous waste management facility permit for a facility when a permit was issued prior to January 1, 1995, if the new permit is not because of a change in the owner or operator at that facility.

(5) For the purposes of this section, "applicant" includes a subsidiary or successor in interest with respect to the applicant.

History: En. Sec. 2, Ch. 218, L. 1995.

75-10-427. Denial or modification of permit — mitigating factors. (1) The department may deny an application for the issuance, reissuance, renewal, or modification of a permit for a hazardous waste management facility or impose additional conditions on a permit pursuant to subsection (2) if within 5 years before the date of the application:

(a) a civil complaint or administrative enforcement action for a violation of an environmental protection law has resulted in the assessment of a penalty against the applicant;

(b) a judgment of criminal conviction of an environmental protection law has been entered against the applicant;

(c) the applicant has a history of repeated violations of environmental protection laws; or

(d) a judgment or criminal conviction for a violation described in 75-10-426(1)(d) has been entered against the applicant.

(2) As provided under subsection (1), the department may impose additional conditions on a permit related to permit length, inspections, monitoring, recordkeeping, and reporting.

(3) In making the decision to deny an application or to impose conditions on a permit pursuant to subsection (1), the department shall consider the following mitigating factors:

(a) the number, nature, and gravity of the violations of environmental protection laws or violations described in 75-10-426(1)(d);

(b) the degree of culpability of the applicant;

(c) the applicant's cooperation with the state or federal agencies involved in the complaints, enforcement actions, and convictions referred to in 75-10-426; and

(d) the applicant's dissociation from other persons or entities involved in the complaints or enforcement actions or convicted of acts referred to in 75-10-426.

(4) For the purposes of this section, "applicant" includes a subsidiary or successor in interest with respect to the applicant.

History: En. Sec. 3, Ch. 218, L. 1995.

75-10-428. Liability — defense and exclusions. (1) A person has a defense against liability in a tort action for damages suffered as a result of an act or omission that constitutes a violation of this part, a rule adopted under this part, or a condition of a permit or authorization required by a rule adopted under this part if the person can establish by a preponderance of the evidence that:

(a) the person is a government entity that acquired ownership or control through bankruptcy, tax delinquency, abandonment, or lien foreclosure in which the government entity acquired title by virtue of the government entity's authority;

(b) the person has not caused or contributed to the violation; and

(c) the person is making an effort to abate the violation.

(2) For the purposes of this part, "government entity" includes a consolidated city-county, a county, and an incorporated city or town.

History: En. Sec. 3, Ch. 159, L. 2013.

75-10-429 and 75-10-430 reserved.

75-10-431. Definitions. As used in 75-10-432, the following definitions apply:

(1) "Class I facility" means a hazardous waste management facility that:

(a) contains one or more regulated landfill units, surface impoundments, land treatment units, incinerators, boilers, or industrial furnaces; and

(b) primarily receives hazardous waste generated by offsite sources not owned, controlled, or operated by the facility owner or operator.

(2) "Class II facility" means a hazardous waste management facility that is neither a class I facility nor a class III facility.

(3) "Class III facility" means a hazardous waste management facility that:

(a) does not contain a regulated landfill unit, surface impoundment, land treatment unit, incinerator, boiler, or industrial furnace; and

(b) primarily receives hazardous waste generated either onsite or by offsite sources that are owned, controlled, or operated by the facility owner or operator.

History: En. Sec. 2, Ch. 341, L. 1993.

75-10-432. Hazardous waste management facility filing and review fees. (1) The department may establish and collect fees for the filing and review of hazardous waste management facility permits. The fees must be based upon the following schedule:

(a) for class I facilities, a maximum fee of $150,000, payable as follows:

(i) a nonrefundable payment of $50,000 due when an applicant files for a permit;

(ii) a payment of $50,000 due when the department notifies the applicant that the application is complete; and

(iii) an additional payment of up to $50,000 for the portion of the department's actual costs of review that exceed $100,000. This payment is due 30 days after the department's final decision on the application.

(b) for class II facilities, a maximum fee of $90,000, payable as follows:

(i) a nonrefundable payment of $40,000 due when an applicant files for a permit; and

(ii) an additional payment of up to $50,000 for the portion of the department's actual costs of review that exceed $40,000. This payment is due 30 days after the department's final decision on the application.

(c) for class III facilities, a maximum fee of $25,000, payable as follows:

(i) a nonrefundable payment of $10,000 due when an applicant files for a permit; and

(ii) an additional payment of up to $15,000 for the portion of the department's actual costs of review that exceed $10,000. This payment is due 30 days after the department's final decision on the application.

(2) If, after receipt of the payment required in subsection (1)(a)(ii), the applicant notifies the department in writing of its intent to withdraw the application, the department shall return to the applicant any portion of the payment received pursuant to subsection (1)(a)(ii) in excess of the department's actual costs of permit review.

(3) The department shall deposit all fees collected pursuant to this section into an account in the state special revenue fund as provided in 75-10-434.

History: En. Sec. 3, Ch. 341, L. 1993.

75-10-433. Hazardous waste management fees. (1) An owner or operator of a hazardous waste management facility that primarily receives waste generated by offsite sources that are not owned, controlled, or operated by the facility owner or operator or site owner shall collect from generators and remit quarterly to the department a fee of:

(a) $8 per ton on all hazardous waste received at the facility or site for management in regulated landfill units, surface impoundments, land treatment units, incinerators, boilers, or industrial furnaces; and

(b) $4 per ton on all hazardous waste received at the facility or site for management in any regulated unit or units other than those units described in subsection (1)(a).

(2) The fees established in subsection (1) may be prorated for amounts of hazardous waste received that are less than 1 ton in weight.

(3) The department shall remit 15% of the fees received under this section from a facility to the county in which the facility is located. The county may use the money for the purpose of implementing hazardous material or hazardous waste monitoring and response programs.

(4) The department shall deposit all fees collected under this section, except fees paid to a county, into an account in the state special revenue fund as provided in 75-10-434.

History: En. Sec. 4, Ch. 341, L. 1993.

75-10-434. Deposit of hazardous waste management fees. (1) There must be credited to an account within the state special revenue fund established in 17-2-102:

(a) all fees collected under 75-10-432;

(b) all fees collected under 75-10-433, except fees paid to a county;

(c) all fees collected for the registration of hazardous waste generators; and

(d) all fees collected for the reissuance or modification of hazardous waste management facility permits.

(2) Money in the account may be used by the department only for the administration of the hazardous waste provisions of this part.

History: En. Sec. 5, Ch. 341, L. 1993; amd. Sec. 1, Ch. 84, L. 1997.

75-10-435 through 75-10-440 reserved.

75-10-441. Hazardous waste site — public hearing required before operation. (1) The owner or manager of a proposed commercial facility for the storage, collection, or transfer of hazardous waste (whether or not the proposed facility is subject to permitting under 75-10-406) shall conduct a public hearing in the nearest population center to provide information and answer questions on:

(a) facility plans and operating procedures;

(b) emergency response plans and the manner in which neighboring population densities have been considered in the facility siting decision;

(c) the kinds of substances to be handled and any applicable state and federal requirements for the provision of public information on these substances;

(d) procedures that will be used to inform the public of any changes in the kinds of substances to be handled; and

(e) any other matters related to the operation of the facility that are pertinent to protecting public health, safety, and the environment.

(2) The hearing must be conducted no later than 60 days prior to the commencement of commercial hazardous waste storage, collection, or transfer operations at the facility.

(3) The hearing must be preceded by written notice:

(a) posted in no fewer than 25 locations of high public visibility and geographically distributed in neighborhoods within one-half mile of the facility;

(b) published in a newspaper of general circulation once a week for the 3 weeks immediately preceding the hearing; and

(c) delivered to the department not less than 30 days prior to the hearing.

History: En. Sec. 1, Ch. 340, L. 1987.

75-10-442. Moratorium on certain hazardous waste facility permits. (1) Until October 1, 1993, the department may not issue a permit under 75-10-406 for a boiler or industrial furnace that burns hazardous waste or hazardous waste-derived fuel.

(2) Notwithstanding the provisions of (1), the department shall proceed in a reasonable and timely manner in adopting rules implementing 75-10-406 and in processing applications required under 75-10-406.

History: En. Sec. 3, Ch. 16, Sp. L. July 1992.

75-10-443 through 75-10-446 reserved.

75-10-447. Renumbered 75-11-526. Sec. 36(2), Ch. 112, L. 1997.

75-10-448 through 75-10-450 reserved.

75-10-451. Halogenated solvents — sale restricted — proof of registration required — procedure. (1) It is unlawful for any person to distribute, sell, or offer for sale within the state quantities of 20 gallons or more of halogenated solvent annually to a single purchaser for commercial or government use unless the purchaser possesses proof of registration with the department.

(2) It is unlawful for any person to annually use 20 gallons or more of a halogenated solvent for commercial purposes without registering with the department.

(3) Under this section, halogenated solvents include but are not limited to solvents containing tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane,

and other hazardous wastes referenced in 40 CFR 261.31, United States environmental protection agency hazardous waste numbers F001 and F002, as amended.

(4) To register with the department, a person or government unit shall file a statement indicating the following:

(a) the person's or government unit's name and business address;

(b) the estimated volume of halogenated solvent used annually for commercial or government purposes; and

(c) the method of waste disposal in accordance with requirements specified by department rules, including:

(i) treatment or disposal in an onsite facility;

(ii) delivery to an appropriate offsite storage, treatment, or disposal facility;

(iii) beneficial use or reuse; or

(iv) legitimate recycling or reclamation.

(5) Pursuant to the requirements of subsection (4), the department shall:

(a) notify affected persons and government units of the requirements;

(b) prepare and distribute forms for the statement;

(c) prepare and distribute information to assist persons and government units in selecting appropriate methods to use, dispose of, or reuse waste halogenated solvents; and

(d) register any person or government unit who files a completed statement.

(6) This section does not authorize the department to impose new or additional requirements for waste disposal on commercial or government users of halogenated solvents.

History: En. Sec. 1, Ch. 117, L. 1989.

Part 5
Motor Vehicle Recycling and Disposal

Part Cross-References

Beauty of state, Preamble, Mont. Const.
Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.
Removal and sale of abandoned vehicles, Title 61, ch. 12, part 4.
Penalties, fees, and interest, Title 75, ch. 1, part 10.
Junked motor vehicles as reinforcement prohibited — penalty, 75-7-106.

75-10-501. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Component part" means any identifiable part of a discarded, ruined, wrecked, or dismantled motor vehicle, including but not limited to fenders, doors, hoods, engine blocks, motor parts, transmissions, frames, axles, wheels, tires, and passenger compartment fixtures.

(3) "Department" means the department of environmental quality provided for in 2-15-3501.

(4) "Junk mobile home" means a mobile home as defined in 15-24-201 that is wrecked, ruined, dismantled, or abandoned and is no longer fit for human habitation.

(5) "Junk nonmotorized vehicle" means an inoperative vehicle that is not constructed with a motor and that is discarded, ruined, wrecked, or dismantled.

(6) (a) "Junk vehicle" means a motor vehicle, including component parts:

(i) that is discarded, ruined, wrecked, or dismantled;

(ii) that, except as provided in subsection (6)(b), is not lawfully and validly licensed; and

(iii) that remains inoperative or incapable of being driven.

(b) If a vehicle is permanently registered under 61-3-562 and meets the criteria for a junk vehicle under subsection (6)(a), the vehicle is a junk vehicle.

(7) "Motor vehicle graveyard" means a collection point established by a county for junk motor vehicles prior to their disposal.

(8) (a) "Motor vehicle wrecking facility" means:

(i) a facility buying, selling, or dealing in four or more vehicles a year, of a type required to be licensed, for the purpose of wrecking, dismantling, disassembling, or substantially changing the form of the motor vehicle; or

(ii) a facility that buys or sells component parts, in whole or in part, and deals in secondhand motor vehicle parts. A facility that buys or sells component parts of a motor vehicle, in whole or

in part, is a motor vehicle wrecking facility whether or not the buying or selling price is based upon weight or any other type of classification.

(b) The term does not include a garage where wrecked or disabled motor vehicles are temporarily stored for a reasonable period of time for inspection, repairs, or subsequent removal to a junkyard.

(9) "Person" means any individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or other governmental or private entity, whether organized for profit or not.

(10) "Public view" means any point 6 feet above the surface of the center of a public road from which junk vehicles can be seen.

(11) "Shielding" means the construction or use of fencing or constructed or natural barriers to conceal junk vehicles from public view.

History: En. Sec. 1, Ch. 410, L. 1973; amd. Sec. 1, Ch. 251, L. 1977; amd. Sec. 1, Ch. 252, L. 1977; R.C.M. 1947, 69-6801; amd. Sec. 1, Ch. 28, L. 1983; amd. Sec. 1, Ch. 572, L. 1991; amd. Sec. 196, Ch. 418, L. 1995; amd. Secs. 529, 568, Ch. 546, L. 1995; amd. Sec. 1, Ch. 265, L. 2007; amd. Sec. 2503, Ch. 56, L. 2009; amd. Sec. 2, Ch. 427, L. 2019.

75-10-502. Possession of junk vehicles as prima facie evidence of motor vehicle wrecking facility. Possession at a single location of four or more junk vehicles of a type required to be licensed is prima facie evidence that the possessor is operating a motor vehicle wrecking facility.

History: En. Sec. 3, Ch. 410, L. 1973; amd. Sec. 3, Ch. 252, L. 1977; R.C.M. 1947, 69-6803.

75-10-503. Adoption of rules. (1) The department shall adopt rules necessary for the administration of this part, except 75-10-520, including but not limited to rules pertaining to:

(a) the establishment, control, operation, and licensing of motor vehicle wrecking facilities and graveyards;

(b) the control of junk vehicles in locations other than motor vehicle wrecking facilities and graveyards;

(c) the inspection and evaluation of premises and records subject to or required by this part;

(d) the development of budget and fiscal forms and procedures for counties;

(e) the review, approval, and control procedures for county motor vehicle graveyards developed under this part; and

(f) the shielding of a junk vehicle and motor vehicle wrecking facility and graveyard from public view. The department may not adopt a rule that requires any motor vehicle wrecking facility that existed prior to July 1, 1973, and that has been continuously used as a motor vehicle wrecking facility to construct a fence or barrier that would be in excess of 12 feet in height.

(2) The department shall adopt rules authorizing the sale of junk vehicles by county motor vehicle graveyards to licensed motor vehicle wrecking facilities.

(3) The department shall adopt rules providing for the reimbursement of hired removal charges of certain abandoned vehicles in accordance with 61-12-401.

History: (1)En. Sec. 8, Ch. 410, L. 1973; amd. Sec. 6, Ch. 252, L. 1977; R.C.M. 1947, 69-6808(part); amd. Sec. 2, Ch. 28, L. 1983; (2)En. Sec. 1, Ch. 698, L. 1989; amd. Sec. 2, Ch. 572, L. 1991; amd. Sec. 197, Ch. 418, L. 1995; amd. Sec. 5, Ch. 513, L. 1999.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

75-10-504. Shielding — new facility. A motor vehicle wrecking facility or graveyard site established or proposed on or after July 1, 1973, may not be approved for use or licensed if the proposed facility cannot be shielded from public view on the date it is initially established or proposed to the department for licensure. The prohibition concerning approval of a new motor vehicle wrecking facility or graveyard site does not apply to a facility site that was licensed as such at any time within the 18 months immediately preceding the date an application is made for licensure of such site.

History: En. Sec. 8, Ch. 410, L. 1973; amd. Sec. 6, Ch. 252, L. 1977; R.C.M. 1947, 69-6808(part); amd. Sec. 3, Ch. 28, L. 1983.

Cross-References

Rules governing screening by Department of Transportation, 75-15-222.

75-10-505. Shielding and removal of junk vehicles generally. Notwithstanding the provisions of this part, any person possessing one or more junk vehicles, regardless of ownership, shall shield the vehicles from public view or remove the vehicles to a licensed motor vehicle wrecking facility or to a licensed motor vehicle graveyard after the vehicles are released from the owner. Small accumulations of salvageable vehicles or component parts, none of which are offered for sale, retained by active farming or ranching operations for repair and maintenance of vehicles, or agricultural equipment used in their operations, are exempted from this requirement.

History: En. Sec. 6, Ch. 572, L. 1991.

Cross-References

Component part defined, 75-10-501.

75-10-506 through 75-10-510 reserved.

75-10-511. Motor vehicle wrecking facility and motor vehicle graveyard licenses. (1) A person may not conduct, maintain, or operate a motor vehicle wrecking facility or motor vehicle graveyard without a license issued by the department.

(2) Application for the license must be made on forms furnished by the department.

(3) An annual fee of $100 must be paid to the department for the license. The fee may be quarterly prorated for new facilities.

(4) A motor vehicle graveyard is excluded from paying the annual license fee but must meet all other requirements of this part.

(5) A license must be displayed in a prominent place in the licensed facility or graveyard.

(6) The license expires on December 31 of the year issued.

(7) If a motor vehicle wrecking facility ceases to do business, the license must be surrendered to the department. The license is not transferable.

History: En. Sec. 2, Ch. 410, L. 1973; amd. Sec. 2, Ch. 252, L. 1977; R.C.M. 1947, 69-6802(1) thru (6); amd. Sec. 2, Ch. 317, L. 2001.

75-10-512. Records required of facilities. (1) Each motor vehicle wrecking facility shall maintain books or files in which are kept a record and description of every junk vehicle obtained by it, together with the name and address of the person from whom the vehicle was purchased.

(2) This record must also contain:

(a) the certificate of title, sheriff's certificate of sale, notarized bill of sale from the former owner or person selling the vehicle, release of ownership or interest in the motor vehicle, or sheriff's release;

(b) the name of the state where the vehicle was last registered;

(c) the make of the vehicle;

(d) the vehicle identification number, as defined in 61-3-210, or the motor number, identification number, or serial number;

(e) the date purchased;

(f) the disposition of the vehicle.

(3) An authorized representative of the department of justice who presents credentials may also inspect, have access to, and copy records required under this section.

History: En. Sec. 4, Ch. 410, L. 1973; R.C.M. 1947, 69-6804(1), (2); amd. Sec. 1, Ch. 427, L. 1985; amd. Sec. 5, Ch. 725, L. 1991; amd. Sec. 76, Ch. 10, L. 1993; amd. Sec. 79, Ch. 477, L. 2003.

75-10-513. Disposal of junk vehicles — records. (1) If a person owning or operating a motor vehicle wrecking facility submits a junk vehicle to the disposal program, the vehicle is then the property of the state.

(2) A person owning or operating a motor vehicle graveyard shall submit to the department the records, documents, and other information concerning junk vehicles received by that person that are required by rules of the department.

History: En. Sec. 4, Ch. 410, L. 1973; R.C.M. 1947, 69-6804(3); amd. Sec. 2, Ch. 427, L. 1985; amd. Sec. 13, Ch. 503, L. 1985; amd. Sec. 69, Ch. 18, L. 1995; amd. Sec. 1, Ch. 281, L. 2003; amd. Sec. 80, Ch. 477, L. 2003; amd. Sec. 3, Ch. 53, L. 2007.

75-10-514. Denial, suspension, or revocation of license — grounds. (1) The department may deny or suspend a motor vehicle wrecking facility's license on any of the following grounds:

(a) The applicant or licensee sold or otherwise disposed of a motor vehicle, trailer, or any part of a motor vehicle or trailer when it knew the vehicle or part was stolen or was appropriated without the consent of the owner.

(b) The applicant or licensee committed forgery on a certificate of title covering a vehicle that has been reassembled from parts obtained from the disassembling of other vehicles.

(c) The applicant or licensee committed any illegal act or omission that has caused loss as the result of a sale of a motor vehicle, trailer, or part of a motor vehicle or trailer.

(d) The applicant or licensee failed to comply with this part or with a rule of the department.

(e) The applicant or licensee obtained a license fraudulently.

(2) The department may revoke a motor vehicle wrecking facility's license on the following grounds:

(a) the license was suspended pursuant to subsection (1)(d) and the facility failed to cure the defect or defects underlying the suspension during the period of suspension; or

(b) the license was suspended pursuant to subsection (1)(a), (1)(b), (1)(c), or (1)(e) and, after suspension, the licensee performed an act that is grounds for suspension pursuant to subsections (1)(a) through (1)(e) at any time during the remaining active life of the facility.

History: En. Sec. 9, Ch. 410, L. 1973; R.C.M. 1947, 69-6809; amd. Sec. 2, Ch. 213, L. 1997.

75-10-515. Appeals. A decision by the department to issue, deny, or revoke a motor vehicle wrecking facility or graveyard license may be appealed to the board within 30 days after receipt of official notice of the department's decision.

History: En. Sec. 2, Ch. 410, L. 1973; amd. Sec. 2, Ch. 252, L. 1977; R.C.M. 1947, 69-6802(7).

75-10-516. Motor vehicle wrecking facilities and motor vehicle graveyards — licensing process — decision criteria. (1) When an application for a motor vehicle wrecking facility or motor vehicle graveyard is filed with the department, the department shall notify by mail:

(a) each owner of property adjoining the proposed facility;

(b) the governing body of the county in which the proposed facility is to be located; and

(c) a newspaper of general circulation in the area where the proposed facility is to be located.

(2) Within 30 days of receipt of the notification in subsection (1)(b), the governing body of the county may:

(a) conduct a public hearing to determine whether the proposed facility will significantly affect the quality of life of adjoining landowners and the surrounding community; and

(b) adopt a resolution in support of or opposition to the location of the proposed facility and transmit a copy of the resolution to the department.

(3) The department may not grant a license to a facility that a governing body has opposed under subsection (2)(b).

(4) In making its decision to grant or deny a license application, the department shall consider the effect of the proposed facility on adjoining landowners and land uses.

History: En. Sec. 1, Ch. 607, L. 1991.

Cross-References

Motor vehicle graveyard and motor vehicle wrecking facility defined, 75-10-501.

75-10-517 through 75-10-519 reserved.

75-10-520. Disposal of damaged vehicle when insurance company settles at total loss. An insurance company settling an insurance claim on a damaged motor vehicle as a total loss less salvage may dispose of the motor vehicle at a motor vehicle wrecking facility only if it is licensed under the provisions of 75-10-511.

History: En Sec. 1, Ch. 244, L. 1979.

Cross-References

Transfer of ownership of vehicle by insurance company, 61-3-205.

75-10-521. Powers and duties of county motor vehicle recycling and disposal programs. (1) (a) Each county shall acquire, develop, and maintain property for free motor vehicle graveyards. The property may be acquired by purchase, lease, or otherwise.

(b) As an alternative, the county may contract for the maintenance and operation of a motor vehicle graveyard or graveyards, but any such contract may be entered into only with a motor vehicle wrecking facility licensed under the provisions of this part.

(2) Two or more counties may join to form a district for the purpose stated in this section. If a district is formed, all provisions of this part pertaining to a county also apply to a district formed under this subsection.

(3) When there is an accumulation of at least 200 junk vehicles in the graveyard, the county shall notify the department for disposal purposes.

(4) The county commissioners of each county shall designate a representative to be responsible for implementing this part.

(5) Each county, through its designated representative, shall inspect each licensed motor vehicle wrecking facility within its boundaries, consistent with rules adopted by the department.

(6) Each county may sell junk vehicles from the motor vehicle graveyard to licensed motor vehicle wrecking facilities. The sales may be conducted only pursuant to a plan that has been approved by the department for consistency with its rules.

(7) A county shall submit to the department for approval a plan for the collection of junk vehicles and the establishment and operation of the motor vehicle graveyard.

(8) (a) The county shall submit to the department for approval a proposed budget for the succeeding fiscal year.

(b) The budget must be for the amounts required by the county for collection costs, acquisition, maintenance, and operation of the graveyard, for funding of a motor vehicle recycling and disposal capital improvement fund established pursuant to subsection (9), if applicable, and for other duties relating to implementation of this part.

(c) Except as provided in subsection (8)(f), up to 10% of the budget may be designated to a motor vehicle recycling and disposal capital improvement fund established pursuant to subsection (9).

(d) If a county agrees to accept junk nonmotorized vehicles or junk mobile homes for recycling and disposal as provided in subsection (10), no more than 20% of the budget may be used to dispose of junk nonmotorized vehicles and junk mobile homes.

(e) Except as provided in subsection (8)(f), at the end of a fiscal year, unspent money may be transferred to a motor vehicle recycling and disposal capital improvement fund established pursuant to subsection (9).

(f) No allocations pursuant to this section may be made to a county's motor vehicle recycling and disposal capital improvement fund if the fund balance exceeds $200,000. The fund may continue to earn interest and income from investments.

(g) Any proposed change in the budget or plan must be approved by the department.

(9) (a) A county may establish a motor vehicle recycling and disposal capital improvement fund in accordance with the provisions of 7-6-616.

(b) Money in a motor vehicle recycling and disposal capital improvement fund may be spent only for the replacement and acquisition of property, capital improvements, and equipment necessary to maintain and improve the county's motor vehicle recycling and disposal program.

(10) (a) A county may accept for recycling and disposal junk nonmotorized vehicles and junk mobile homes that cause:

(i) a public nuisance as provided in 45-8-111; or

(ii) conditions of community decay as provided in 7-5-2110.

(b) If a county agrees to accept junk nonmotorized vehicles or junk mobile homes pursuant to subsection (10)(a):

(i) prior to recycling and disposal of a junk nonmotorized vehicle, the junk nonmotorized vehicle must be released to the county by the owner or by law enforcement officials in accordance with 61-12-402(7)(a); and

(ii) prior to recycling and disposal of a junk mobile home:

(A) if the junk mobile home is on private property, the junk mobile home may be released to the county only by written consent of the owner. The county may dispose of a junk mobile home on private property only if the county has also received the permission of the property owner where the junk mobile home is located.

(B) if a junk mobile home is abandoned on public property for more than 2 weeks, the county may dispose of the junk mobile home after first sending a certified letter to the last-known owner of the junk mobile home or, if no owner information is available, after notice has been placed in a paper of general circulation. If the junk mobile home remains on the public property after 2 weeks from when the notice is sent or published, the county may dispose of the junk mobile home. If an owner can be identified for the junk mobile home, the county may require that the owner reimburse the cost of transport and disposal of the junk mobile home.

History: En. Sec. 5, Ch. 410, L. 1973; amd. Sec. 2, Ch. 251, L. 1977; R.C.M. 1947, 69-6805; amd. Sec. 3, Ch. 572, L. 1991; amd. Sec. 1, Ch. 88, L. 2017; amd. Sec. 3, Ch. 427, L. 2019.

Cross-References

Interlocal agreements, Title 7, ch. 11, part 1.

75-10-522. Use of motor vehicle graveyards by individuals. An individual may dispose of a junk vehicle by delivering the vehicle to a motor vehicle graveyard and by delivering to the department the certificate or evidence of title to the vehicle or a written release of the vehicle.

History: En. Sec. 6, Ch. 410, L. 1973; amd. Sec. 1, Ch. 520, L. 1975; amd. Sec. 4, Ch. 252, L. 1977; R.C.M. 1947, 69-6806(4).

Cross-References

Certificates of title, Title 61, ch. 3, part 2.

75-10-523 through 75-10-530 reserved.

75-10-531. Crushing and recycling of junk vehicles. (1) The department shall contract for final disposition of junk vehicles accumulated in motor vehicle graveyards and shall provide for crushing and recycling the material from the vehicles.

(2) The department may also contract to dispose of, by crushing and recycling, junk vehicles accumulated in the yard of a motor vehicle wrecking facility. The department may so contract only upon the request of the facility and only if there is an accumulation of at least 200 vehicles at the facility.

History: En. Sec. 6, Ch. 410, L. 1973; amd. Sec. 1, Ch. 520, L. 1975; amd. Sec. 4, Ch. 252, L. 1977; R.C.M. 1947, 69-6806(1), (2).

75-10-532. Disposition of money collected. All money received from the sale of junk vehicles or from recycling of the material and all motor vehicle wrecking facility license fees must be remitted to the state, as provided in 15-1-504. Subject to legislative fund transfers, the money must be used for the control, collection, recycling, and disposal of junk vehicles and component parts and for the removal of abandoned vehicles.

History: Ap. p. Sec. 6, Ch. 410, L. 1973; amd. Sec. 1, Ch. 520, L. 1975; amd. Sec. 4, Ch. 252, L. 1977; Sec. 69-6806, R.C.M. 1947; Ap. p. Sec. 7, Ch. 410, L. 1973; amd. Sec. 1, Ch. 52, L. 1975; amd. Sec. 2, Ch. 520, L. 1975; amd. Sec. 18, Ch. 140, L. 1977; amd. Sec. 5, Ch. 252, L. 1977; Sec. 69-6807, R.C.M. 1947; R.C.M. 1947, 69-6806(3), 69-6807(1); amd. Sec. 5, Ch. 241, L. 1983; amd. Sec. 4, Ch. 633, L. 1985; amd. Sec. 2, Ch. 718, L. 1985; amd. Sec. 198, Ch. 418, L. 1995; amd. Sec. 6, Ch. 513, L. 1999; amd. Sec. 38, Ch. 257, L. 2001; amd. Sec. 3, Ch. 317, L. 2001; amd. Sec. 2, Ch. 281, L. 2003; amd. Sec. 235, Ch. 542, L. 2005; amd. Sec. 8, Ch. 312, L. 2011.

75-10-533. Department to report fees. The department shall report to the office of budget and program planning, as a part of the information required by 17-7-111, the amount collected under this part and the cost of administration of this part, except 75-10-520, to date so that any necessary adjustment of the amount of the fee may be made to ensure that no more than the actual cost of operation of the program is collected.

History: En. Sec. 7, Ch. 410, L. 1973; amd. Sec. 1, Ch. 52, L. 1975; amd. Sec. 2, Ch. 520, L. 1975; amd. Sec. 18, Ch. 140, L. 1977; amd. Sec. 5, Ch. 252, L. 1977; R.C.M. 1945, 69-6807(3); amd. Sec. 50, Ch. 112, L. 1991; amd. Sec. 44, Ch. 349, L. 1993; amd. Sec. 188, Ch. 574, L. 2001.

75-10-534. Department to pay approved county budget. The department shall pay to a county the amount of the approved junk vehicle collection and graveyard budget of the county. The yearly payment may not exceed $1.40 for each motor vehicle under 8,001 pounds gross vehicle weight that is licensed in that county. However, for those counties that have fewer than 5,000 motor vehicles under 8,001 pounds gross vehicle weight, the department may pay up to $7,500 if the county can justify this payment. Counties realizing revenue from the sale of junk vehicles shall return to the state junk vehicle program revenue account money equal to the salvage value of each vehicle sold. The salvage value of a vehicle must be the average contract

value of a crushed ton of junk vehicles as determined by the statewide salvage bids received by the department during the current fiscal year. Any additional revenue realized from the sale of junk vehicles may be retained by the county for use in the county's junk vehicle program in addition to the approved junk vehicle collection and graveyard budget of the county.

History: En. Sec. 7, Ch. 410, L. 1973; amd. Sec. 1, Ch. 52, L. 1975; amd. Sec. 2, Ch. 520, L. 1975; amd. Sec. 18, Ch. 140, L. 1977; amd. Sec. 5, Ch. 252, L. 1977; R.C.M. 1945, 69-6807(4); amd. Sec. 4, Ch. 572, L. 1991; amd. Sec. 1, Ch. 200, L. 2003; amd. Sec. 1, Ch. 408, L. 2007.

75-10-535 through 75-10-539 reserved.

75-10-540. Administrative enforcement. (1) When the department determines that a violation of this part, a violation of a rule adopted or an order issued under this part, or a violation of a license provision has occurred, it may serve written notice of the violation on the alleged violator or the violator's agent. The notice must specify the law, rule, or license provision alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time, an order assessing an administrative penalty pursuant to 75-10-542, or both. The order becomes final 30 days after the notice is served unless the person named requests, in writing, a hearing before the board. On receipt of the request for a hearing, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

(2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it shall either affirm or change the department's order. An order may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after a hearing, the board finds that a violation has not occurred, it shall rescind the department's order.

(3) The department shall make efforts to obtain voluntary compliance through warning, conference, or any other appropriate means before issuing an order pursuant to subsection (1).

(4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section.

History: En. Sec. 1, Ch. 213, L. 1997; amd. Sec. 3, Ch. 443, L. 2005.

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

75-10-541. Injunction — action to collect civil penalty — authority of department of justice. (1) The department may sue to enjoin the operation or maintenance of a motor vehicle wrecking facility or graveyard either permanently or until compliance with this part, the rules of the department, or an order issued pursuant to this part has been demonstrated.

(2) The department may sue in district court to collect a civil penalty as provided in 75-10-542.

(3) Upon request of the department, the attorney general or the county attorney of the county in which a motor vehicle wrecking facility or graveyard is located may petition the district court to enjoin further operation or maintenance of a motor vehicle wrecking facility or graveyard or to impose, assess, and recover a civil penalty, as appropriate.

(4) The department of justice, through the attorney general or the county attorney of the county in which a facility is located, may sue in district court to collect a civil penalty as provided in 75-10-542 for violations of 75-10-512 discovered during department of justice inspections.

History: En. Sec. 10, Ch. 410, L. 1973; amd. Sec. 7, Ch. 252, L. 1977; R.C.M. 1947, 69-6810; amd. Sec. 5, Ch. 572, L. 1991; amd. Sec. 6, Ch. 725, L. 1991; amd. Sec. 4, Ch. 53, L. 2007.

Cross-References

Injunctions, Title 27, ch. 19.

75-10-542. Penalties. (1) A person who purposely or knowingly violates this part, except 75-10-520, is guilty of a misdemeanor and upon conviction shall be fined an amount not to exceed $250, be imprisoned in the county jail for a term not to exceed 30 days, or both.

(2) A person who violates a provision of this part, except 75-10-520, a rule of the department, or an order issued as provided in this part is subject to an administrative penalty of not more than $50 or a civil penalty of not more than $250. Each day upon which a violation of this part, a rule, or an order occurs is a separate violation.

(3) Penalties assessed under subsection (2) must be determined in accordance with the penalty factors in 75-1-1001. The penalties provided for in this section are recoverable in an

enforcement or collection action brought by the department. An action to recover penalties must be brought in the district court of the county in which the violation occurred.

History: En. 69-6812 by Sec. 2, Ch. 112, L. 1975; amd. Sec. 8, Ch. 252, L. 1977; R.C.M. 1947, 69-6812; amd. Sec. 10, Ch. 443, L. 2005; amd. Sec. 36, Ch. 535, L. 2021.

Cross-References

Execution of criminal fine, 46-19-102.

Part 6
State Participation in CERCLA

Part Cross-References

Allocation of junk vehicle regulatory fees to Department for implementation of part, 75-10-532.

75-10-601. Purpose. The legislature finds that the existence of hazardous substances and contaminants in the environment and hazardous waste disposal sites poses a significant health hazard through potential and actual contamination of the environment. This part is therefore enacted to protect the public health, safety, and welfare through cooperation with the federal government under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to provide for the disposal and control of such hazardous substances and contaminants in a safe and environmentally sound manner.

History: En. Sec. 1, Ch. 241, L. 1983.

75-10-602. Definitions. As used in this part, the following definitions apply:

(1) "CERCLA" means the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510.

(2) (a) "Contaminant" includes but is not limited to any element, substance, compound, or mixture, including disease-causing agents, that after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction), or physical deformations in the organisms or their offspring.

(b) The term does not include petroleum (including crude oil or any fraction of crude oil that is not specifically listed or designated as a hazardous substance as provided in subsection (4)(a)) or natural gas, liquefied natural gas, synthetic gas of pipeline quality, or mixtures of natural gas and synthetic gas.

(3) "Department" means the department of environmental quality provided for in 2-15-3501.

(4) (a) "Hazardous substance" means:

(i) any substance designated pursuant to section 311(b)(2)(A) of the federal Water Pollution Control Act;

(ii) any element, compound, mixture, solution, or substance designated a hazardous substance by regulations promulgated by the administrator of the federal environmental protection agency pursuant to section 102 of CERCLA;

(iii) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the federal Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by act of congress);

(iv) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act;

(v) any hazardous air pollutant listed under section 112 of the federal Clean Air Act; and

(vi) any imminently hazardous chemical substance or mixture with respect to which the administrator of the environmental protection agency has taken action pursuant to section 7 of the federal Toxic Substances Control Act.

(b) The term does not include petroleum (including crude oil or any fraction of crude oil that is not specifically listed or designated as a hazardous substance as provided in subsection (4)(a)) or natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel, or mixtures of natural gas and synthetic gas.

(5) "Hazardous waste" means a solid waste or combination of solid wastes that because of its quantity, concentration, or physical, chemical, or infectious characteristics may:

(a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(b) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed.

(6) "President" means the president of the United States.

(7) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment but excludes:

(a) any release that results in exposure to persons solely within a workplace, with respect to a claim that persons may assert against their employer;

(b) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;

(c) (i) the release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the federal Atomic Energy Act of 1954, if the release is subject to requirements with respect to financial protection established by the nuclear regulatory commission under section 170 of that act; or

(ii) for the purposes of section 104 of CERCLA or any other response action, any release of source byproduct or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the federal Uranium Mill Tailings Radiation Control Act of 1978; and

(d) the normal application of fertilizer.

(8) (a) "Remedial action" means those actions consistent with a permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment that prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to the present or future public health or welfare or the environment. The term includes but is not limited to those actions at the location of the release as storage; confinement; perimeter protection using dikes, trenches, or ditches; clay cover; neutralization; cleanup of released hazardous substances or contaminated materials; recycling or reuse; diversion; destruction; segregation of reactive wastes; dredging or excavations; repair or replacement of leaking containers; collection of leachate and runoff; onsite treatment or incineration; provision of alternative water supplies; and any monitoring reasonably required to ensure that the actions protect the public health and welfare and the environment. The term includes the costs of permanent relocation of residents and businesses and community facilities if the president determines that, alone or in combination with other measures, the relocation is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition offsite of hazardous substances or is otherwise necessary to protect the public health or welfare.

(b) The term does not include offsite transport of hazardous substances or the storage, treatment, destruction, or secure disposition offsite of the hazardous substances or contaminated materials unless the president determines that the actions:

(i) are more cost-effective than other remedial actions;

(ii) will create a new capacity to manage, in compliance with subtitle C of the federal Solid Waste Disposal Act, hazardous substances in addition to those located at the affected facility; or

(iii) are necessary to protect public health or welfare or the environment from a present or potential risk that may be created by further exposure to the continued presence of the substances or materials.

History: En. Sec. 2, Ch. 241, L. 1983; amd. Sec. 199, Ch. 418, L. 1995.

75-10-603. Cooperative agreement — authority of department. (1) In order to assist in implementation of CERCLA, the department may, subject to the provisions of 75-10-107:

(a) participate in the determination of appropriate remedial action to deal with the release or threatened release within Montana of:

(i) any contaminant presenting an imminent and substantial danger to public health or welfare; or

(ii) any hazardous substance;

(b) in the event of the release or threatened release of any of the substances described in subsection (1)(a), negotiate the terms of a cooperative agreement with the federal government

containing mutual commitments of each party to remedial action, including the elements required by subsection (2).

(2) A cooperative agreement may contain the following assurances:

(a) the state of Montana will ensure the future maintenance of the removal and remedial actions agreed upon for the expected life of the actions;

(b) a hazardous waste disposal facility is available to the state of Montana that meets the specifications of the president and complies with the requirements of subtitle C of the federal Solid Waste Disposal Act for necessary offsite storage, destruction, treatment, or secure disposition of the hazardous substances; and

(c) the state of Montana will pay or ensure payment of a share of the costs of the remedial action, including all future maintenance.

History: En. Sec. 3, Ch. 241, L. 1983; amd. Sec. 77, Ch. 10, L. 1993; amd. Sec. 16, Ch. 471, L. 1995.

75-10-604. Cooperative agreement — when effective. (1) If a cooperative agreement requires expenditure of state and federal funds which, together with the monetary obligation contained in any prior cooperative agreement made during the same biennium, exceeds the amount appropriated for that biennium for implementation of this part, the agreement is not effective until it is approved by the legislature and an appropriation is made providing the level of funding necessitated by the agreement.

(2) A cooperative agreement that does not require expenditure of funds exceeding the appropriation for the biennium for implementation of this part is effective when signed by the governor and the president or their respective representatives.

History: En. Sec. 4, Ch. 241, L. 1983.

75-10-605 through 75-10-620 reserved.

75-10-621. Hazardous waste/CERCLA special revenue account. (1) There is a hazardous waste/CERCLA special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the hazardous waste/CERCLA account:

(a) proceeds from the resource indemnity and ground water assessment tax as provided by 15-38-106;

(b) revenue obtained from the interest income of the resource indemnity trust fund under the provisions of 15-38-202, together with interest accruing on that revenue;

(c) all proceeds of bonds or notes issued under 75-10-623 and all interest earned on proceeds of the bonds or notes; and

(d) revenue from penalties or damages collected under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended in 1986 (CERCLA).

(3) Appropriations may be made from the hazardous waste/CERCLA account only for the following purposes and subject to the following conditions:

(a) not more than one-half of the interest income received for any biennium from the resource indemnity trust fund may be appropriated on a biennial basis for:

(i) implementation of the Montana Hazardous Waste Act, including regulation of underground storage tanks and the state share to obtain matching federal funds;

(ii) implementation of Title 75, chapter 10, part 6, pertaining to state assistance to and cooperation with the federal government for remedial action under CERCLA;

(iii) expenses of the department in administering and overseeing the implementation of Title 75, chapter 10, parts 4 and 6; and

(iv) state expenses relating to investigation and remedial action for any hazardous substance defined in 75-10-602; and

(b) to the extent funds are available after the appropriations in subsection (3)(a), the department may, as appropriate, seek authorization from the legislature or, when the legislature is not in session, through the budget amendment process provided for in Title 17, chapter 7, part 4, to spend funds for:

(i) state participation in remedial action under section 104 of CERCLA;

(ii) state costs for maintenance of sites at which remedial action under CERCLA has been completed; and

(iii) the state share to obtain matching federal funds for underground storage tank corrective action.

(4) For the purposes of subsection (3)(b), the legislature finds that a need for state special revenue to obtain matching federal funds for underground storage tank corrective action or for remedial action under section 104 of CERCLA constitutes a serious unforeseen and unanticipated circumstance for the purpose of meeting the definition of "emergency" in 17-7-102. The legislature further finds that the inability of the department to match the federal funds as the funds become available would seriously impair the functions of the department in carrying out its responsibilities under Title 75, chapter 10, parts 4 and 6.

(5) There is no dollar limit to the hazardous waste/CERCLA account. Unused balances remain in the account until appropriated by the legislature for the purposes specified in this section.

History: En. Sec. 2, Ch. 408, L. 1987; amd. Sec. 15, Ch. 787, L. 1991; amd. Sec. 2, Ch. 16, Sp. L. November 1993; amd. Sec. 1, Ch. 199, L. 2003; amd. Sec. 2, Ch. 496, L. 2003; amd. Sec. 1, Ch. 425, L. 2005; amd. Sec. 10, Ch. 432, L. 2007.

75-10-622. CERCLA match debt service fund. (1) There is a CERCLA match debt service fund within the debt service fund type established in 17-2-102.

(2) The state pledges, allocates, and directs to be credited to the CERCLA match debt service fund money from the resource indemnity and ground water assessment tax, as provided in 15-38-106, and from the CERCLA cost recovery account, as provided in 75-10-631.

History: En. Sec. 3, Ch. 408, L. 1987; amd. Sec. 3, Ch. 496, L. 2003; amd. Sec. 11, Ch. 426, L. 2009.

75-10-623. CERCLA bonds. (1) When authorized by the legislature and within limits of the authorization and the further limitations established in this section, the board of examiners may issue and sell CERCLA bonds of the state in the amount and manner it considers necessary and proper to fund state participation in remedial action under section 104 of CERCLA, as amended, state costs for maintenance of sites at which remedial action under CERCLA has been completed, the state share required to obtain matching federal funds for underground storage tank corrective action, and costs of issuing the bonds or notes. The full faith and credit and taxing powers of the state are pledged for the prompt and full payment of all bonds issued and interest and redemption premiums payable on the bonds according to their terms.

(2) Each series of CERCLA bonds may be issued by the board of examiners upon request of the department of environmental quality, at public or private sale, in the denominations and forms, whether payable to bearer with attached interest coupons or registered as to principal or as to both principal and interest, with provisions for conversion or exchange and for the issuance of notes in anticipation of the issuance of definitive bonds, bearing interest at a rate or rates, maturing at a rate or rates, maturing at the time or times not exceeding 30 years from date of issue, subject to optional or mandatory redemption at earlier times and prices and upon notice, with provisions for payment and discharge by the deposit of funds or securities in escrow for that purpose, and payable at the office of the banking institution or institutions within or outside the state, as the board of examiners determines, subject to the limitations contained in 17-5-731 and this section.

(3) In the issuance of each series of CERCLA bonds, the interest rates, maturities, and any mandatory redemption provisions of the bonds must be established in a manner that the funds then specifically pledged and appropriated by law to the CERCLA match debt service fund will, in the judgment of the board of examiners, be received in an amount sufficient in each year to pay all principal, redemption premiums, and interest due and payable in that year with respect to that and all prior series of the bonds, except outstanding bonds as to which the obligation of the state has been discharged by the deposit of funds or securities sufficient for their payment in accordance with the terms of the resolutions by which they are authorized to be issued.

(4) In all other respects, the board of examiners is authorized to prescribe the form and terms of the bonds and notes and shall do whatever is lawful and necessary for their issuance and payment. The bonds, notes, and any interest coupons appurtenant to the bonds and notes must be signed by the members of the board of examiners, and the bonds and notes must be issued under the great seal of the state of Montana. The bonds, notes, and coupons may

be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all the bonds and notes issued and sold.

(5) All proceeds of bonds or notes issued under this section must be deposited in the hazardous waste/CERCLA special revenue account established in 75-10-621.

(6) All actions taken by the board of examiners under this section must be authorized by a vote of a majority of the members.

History: En. Sec. 4, Ch. 408, L. 1987; amd. Sec. 200, Ch. 418, L. 1995; amd. Sec. 4, Ch. 496, L. 2003.

Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.

75-10-624 reserved.

75-10-625. Authorization for sale of CERCLA bonds. The board of examiners is authorized to issue and sell CERCLA general obligation bonds in an amount not exceeding $10 million upon the request of the department of environmental quality, as provided for in 75-10-623. Proceeds of the bonds or notes must be deposited in the hazardous waste/CERCLA special revenue account provided for in 75-10-621 to fund state participation in remedial action under section 104 of CERCLA, as amended, state costs for maintenance of sites at which remedial action under CERCLA has been completed, the state share required to obtain matching federal funds for underground storage tank corrective action, and costs of issuance of the bonds or notes.

History: En. Sec. 1, Ch. 435, L. 1987; amd. Sec. 201, Ch. 418, L. 1995; amd. Sec. 13, Ch. 10, L. 2009.

75-10-626. Agreement with department of environmental quality. For the proceeds of bonds or notes authorized by this part, the board of examiners and the department of environmental quality may enter into an agreement under the terms of which the department shall pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes and to accumulate and maintain reserves as may be required under the bonds. The agreement must further provide that income from the investment of bond proceeds and the reserves not required for the purposes presented in 75-10-625 must be credited against the department's payment obligation. The agreement must also allow for the accumulation of reserves during the first year that the bonds are outstanding, if required. Payments by the department must be made from available funds.

History: En. Sec. 2, Ch. 435, L. 1987; amd. Sec. 202, Ch. 418, L. 1995; amd. Sec. 14, Ch. 10, L. 2009.

75-10-627. Benefit of state. The agreement made pursuant to 75-10-626 is solely for the benefit of the state of Montana and is not enforceable by bondholders or other third-party beneficiaries.

History: En. Sec. 3, Ch. 435, L. 1987; amd. Sec. 75, Ch. 83, L. 1989.

75-10-628. Repealed. Sec. 500, Ch. 418, L. 1995.

History: En. Sec. 4, Ch. 435, L. 1987.

75-10-629 and 75-10-630 reserved.

75-10-631. CERCLA cost recovery account. (1) There is a CERCLA cost recovery special revenue account in the state special revenue fund established in 17-2-102.

(2) There must be deposited in the CERCLA cost recovery account amounts obtained by the department through cost recovery under CERCLA for costs paid, in whole or in part, with the proceeds of CERCLA bonds authorized in 75-10-623, together with interest on the proceeds.

(3) (a) Money in the CERCLA cost recovery account must be transferred to the CERCLA match debt service fund in each fiscal year in an amount then available, but not to exceed the amount necessary to pay the principal of, premium, if any, and interest on the bonds and notes issued pursuant to 75-10-623 to become due in the next fiscal year, or as appropriate, to pay the redemption price of the bonds or notes.

(b) Money in the CERCLA cost recovery account, including interest on the money in the account, that is not transferred to the CERCLA match debt service fund must be retained in the CERCLA cost recovery account as long as any principal of, premium, if any, or interest on the CERCLA bonds or notes authorized in 75-10-623, the proceeds of which were applied, in whole

or in part, to costs associated with the cost recovery, remains unpaid or the payment of the costs associated with cost recovery has not been provided for in a manner that would cause the defeasance of bonds.

History: En. Sec. 5, Ch. 496, L. 2003.

Part 7
Remedial Action Upon Release of Hazardous Substance

Part Cross-References

Employee and Community Hazardous Chemical Information Act, Title 50, ch. 78.

75-10-701. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of environmental quality provided for in 2-15-3501.

(2) "Director" means the director of the department.

(3) "Environment" means any surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the state of Montana or under the jurisdiction of the state of Montana.

(4) (a) "Facility" means:

(i) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or

(ii) any site or area where a hazardous or deleterious substance has been deposited, stored, disposed of, placed, or otherwise come to be located.

(b) The term does not include any consumer product in consumer use.

(5) "Fiduciary" means a trustee, executor, administrator, personal representative, custodian, conservator, guardian, or receiver acting or holding property for the exclusive benefit of another person. The term does not include:

(a) a person who has previously owned or operated the property in a nonfiduciary capacity; or

(b) a person acting as fiduciary with respect to a trust or other fiduciary estate that has no objectively reasonable or substantial purpose apart from avoidance of or limitation of liability under this part. For the purposes of 75-10-715(9), the term does not include the state, a state agency, or a political subdivision of the state acting as trustee of natural resources within the state of Montana.

(6) "Foreclosure" means acquisition of title to property through foreclosure, purchase at foreclosure sale, assignment or acquisition of title in lieu of foreclosure, repossession in the case of a lease financing transaction, or acquisition of a right to title or other agreement in full or partial settlement of a loan obligation.

(7) "Fund" means the environmental quality protection fund established in 75-10-704.

(8) "Hazardous or deleterious substance" means a substance that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose an imminent and substantial threat to public health, safety, or welfare or the environment and is:

(a) a substance that is defined as a hazardous substance by section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601(14);

(b) a substance identified by the administrator of the United States environmental protection agency as a hazardous substance pursuant to section 102 of CERCLA, 42 U.S.C. 9602;

(c) a substance that is defined as a hazardous waste pursuant to section 1004(5) of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6903(5), including a substance listed or identified in 40 CFR 261; or

(d) any petroleum product.

(9) "Household" means single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, day-use recreational areas, or similar structures or areas.

(10) "Household refuse" means garbage, trash, and sanitary wastes in septic tanks that are derived from a household.

(11) "Institutional control" means a restriction on the use of real property that mitigates the risk posed to public health, safety, and welfare and the environment. Institutional controls include but are not limited to:

(a) deed restrictions;

(b) easements;

(c) reservations;

(d) covenants, either restrictive or affirmative; and

(e) other mechanisms or physical restrictions for controlling present and future land use, including controlled ground water areas, that are placed upon real property to mitigate the risk to public health, safety, and welfare and the environment.

(12) "Natural resources" means land, fish, wildlife, biota, air, surface water, ground water, drinking water supplies, and any other resources within the state of Montana owned, managed, held in trust, or otherwise controlled by or appertaining to the state of Montana or a political subdivision of the state.

(13) "Orphan share" means the percentage share of remedial action costs for a facility that is attributable, under the procedures in 75-10-742 through 75-10-751, to identified but bankrupt or defunct persons who are not an affiliate of any viable person, unless affiliated by stock ownership.

(14) "Orphan share fund" means the fund for the orphan share account established in 75-10-743.

(15) (a) "Owns or operates" means owning, leasing, operating, managing activities at, or exercising control over the operation of a facility.

(b) The term does not include holding the indicia of ownership of a facility primarily to protect a security interest in the facility or other location unless the holder has participated in the management of the facility. The term does not apply to the state or a local government that acquired ownership or control through bankruptcy, tax delinquency, abandonment, lien foreclosure, or other circumstances in which the government acquires title by virtue of its function as sovereign, unless the state or local government has caused or contributed to the release or threatened release of a hazardous or deleterious substance from the facility. The term also does not include the owner or operator of the Milltown dam licensed under part 1 of the Federal Power Act (FERC license No. 2543-004) if a hazardous or deleterious substance has been released into the environment upstream of the dam and has subsequently come to be located in the reservoir created by the dam unless the owner or operator is a person who would otherwise be liable for a release or threatened release under 75-10-715(1).

(16) "Person" means an individual, trust, firm, joint-stock company, joint venture, consortium, commercial entity, partnership, association, corporation, commission, state or state agency, political subdivision of the state, interstate body, or the federal government, including a federal agency.

(17) "Petroleum product" includes gasoline, crude oil (except for crude oil at production facilities subject to regulation under Title 82), fuel oil, diesel oil or fuel, lubricating oil, oil sludge or refuse, and any other petroleum-related product or waste or fraction of the product or waste that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute).

(18) "Reasonably anticipated future uses" means likely future land or resource uses that take into consideration:

(a) local land and resource use regulations, ordinances, restrictions, or covenants;

(b) historical and anticipated uses of the facility;

(c) patterns of development in the immediate area; and

(d) relevant indications of anticipated land use from the owner of the facility and local planning officials.

(19) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a hazardous or deleterious substance directly into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous or deleterious substance),

but excludes releases confined to the indoor workplace environment, the use of pesticides as defined in 80-8-102 when they are applied in accordance with approved federal and state labels, and the use of commercial fertilizers, as defined in 80-10-101, when applied as part of accepted agricultural practice.

(20) "Remedial action" includes all notification, investigation, administration, monitoring, cleanup, restoration, mitigation, abatement, removal, replacement, acquisition, enforcement, legal action, health studies, feasibility studies, and other actions necessary or appropriate to respond to a release or threatened release.

(21) "Remedial action contract" means a written contract or agreement entered into by a remedial action contractor with the state, or with a potentially liable person acting pursuant to an order or request issued by the department, the United States, or any federal agency, to provide a remedial action with respect to a release or threatened release of a hazardous or deleterious substance.

(22) "Remedial action contractor" means:

(a) any person who enters into and is carrying out a remedial action contract; or

(b) any person who is retained or hired by a person described in subsection (22)(a) to provide services relating to a remedial action.

(23) "Remedial action costs" means reasonable costs that are attributable to or associated with a remedial action at a facility, including but not limited to the costs of administration, investigation, legal or enforcement activities, contracts, feasibility studies, or health studies.

History: En. Sec. 1, Ch. 711, L. 1985; amd. Sec. 1, Ch. 274, L. 1989; amd. Sec. 3, Ch. 709, L. 1989; amd. Sec. 52, Ch. 16, L. 1991; amd. Sec. 203, Ch. 418, L. 1995; amd. Sec. 1, Ch. 490, L. 1995; amd. Sec. 1, Ch. 584, L. 1995; amd. Sec. 4, Ch. 415, L. 1997; amd. Sec. 1, Ch. 437, L. 1999; amd. Sec. 3, Ch. 395, L. 2009.

75-10-702. Rulemaking authority. (1) The department is authorized to adopt rules for the implementation of this part, including but not limited to:

(a) rules for listing and delisting facilities on a priority list, required by 75-10-704, based on the following criteria:

(i) a facility eligible for listing must have a confirmed release or substantial threat of a release of a hazardous or deleterious substance that may pose an imminent and substantial threat to public health, safety, or welfare or the environment and the department shall provide a written description of the nature and severity of the threat;

(ii) if remedial actions to address the hazardous or deleterious substances are required at the facility by another state program, the department shall explain, in writing, its rationale for listing the facility;

(iii) listing and delisting must be done through a formal process that provides for public participation, including participation of the affected or potentially liable persons in the decisionmaking process, by giving public notice and providing opportunity for at least one public meeting in the community most likely to be threatened by the facility that is proposed for listing or delisting; and

(iv) a facility must be delisted when another state program assumes jurisdiction or when further remedial actions are not necessary;

(b) rules for establishing and implementing a system for prioritizing facilities, including categories for maximum and high-priority facilities, as required by 75-10-704, for remedial action based on potential effects on human health and the environment.

(2) The rulemaking authority granted in subsection (1) may not invalidate the existing priorities list. Rules promulgated pursuant to subsection (1) must provide for the reevaluation of facilities on the existing priorities list. A decision by the department to list, delist, or establish a priority for a facility must be made in writing.

(3) The department shall adopt, amend, or repeal rules that allow for the joint selection of remedial action contractors acceptable to the department and any person liable for remedial action under 75-10-715.

History: En. Sec. 7, Ch. 711, L. 1985; amd. Sec. 5, Ch. 415, L. 1997; (3)En. Sec. 5, Ch. 539, L. 1997.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

75-10-703. Actions — general provisions. (1) No action taken by any person to contain or remove a release, whether the action is taken voluntarily or at the request of the department or its designee, may be construed as an admission of liability for the discharge.

(2) Actions taken by the department pursuant to 75-10-711 and 75-10-712 are not subject to the public bidding requirements of Title 18.

History: En. Sec. 5, Ch. 711, L. 1985.

75-10-704. Environmental quality protection fund. (1) Subject to legislative fund transfers, there is in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund by the department. The department is authorized to expend amounts from the fund necessary to carry out the purposes of this part.

(2) The fund may be used by the department only to carry out the provisions of this part and for remedial actions taken by the department pursuant to this part in response to a release of hazardous or deleterious substances.

(3) The department shall:

(a) except as provided in subsection (7), establish and implement a system, including the preparation of a priority list, for prioritizing sites for remedial action based on potential effects on human health and the environment; and

(b) investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(4) There must be deposited in the fund:

(a) all penalties, forfeited financial assurance, natural resource damages, and remedial action costs recovered pursuant to 75-10-715;

(b) all administrative penalties assessed pursuant to 75-10-714 and all civil penalties assessed pursuant to 75-10-711(5);

(c) funds allocated to the fund by the legislature;

(d) proceeds from the resource indemnity and ground water assessment tax as authorized by 15-38-106;

(e) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;

(f) funds received from the interest income of the fund;

(g) funds received from settlements pursuant to 75-10-719(7);

(h) funds received from the interest paid pursuant to 75-10-722;

(i) costs recovered pursuant to 75-8-106(7) and penalties recovered pursuant to 75-8-109; and

(j) funds transferred from the orphan share account pursuant to 75-10-743(10). The full amount of these funds must be dedicated each fiscal year as follows:

(i) 50% to the state's contribution for cleanup and long-term operation and maintenance costs at the Libby asbestos superfund site and allocated pursuant to 75-10-1603 and 75-10-1604; and

(ii) [(A) except for the amount provided in subsection (4)(j)(ii)(B),] 50% to metal mine reclamation projects at abandoned mine sites, as provided in 82-4-371. This subsection (4)(j)(ii) does not apply to exploration or mining work performed after March 9, 1971[, except as provided in subsection (4)(j)(ii)(B)]. Projects funded under this subsection (4)(j)(ii) are not subject to the requirements of Title 75, chapter 10, part 7.

[(B) $500,000 a year through June 30, 2038, for long-term maintenance and water treatment at the CR Kendall mine reclamation site. This transfer must be completed before initiating the transfer provided in subsection (4)(j)(ii)(A).]

(5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and additional money remains in the fund, the department shall seek additional authority to spend money from the fund through the budget amendment process provided for in Title 17, chapter 7, part 4.

(6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the department may apply to the governor for a grant from the environmental contingency account established pursuant to 75-1-1101.

(7) (a) There is established a state special revenue account for all funds donated or granted from private parties to remediate a specific release at a specific facility. There must be deposited into the account the interest income earned on the account. A person is not liable under 75-10-715 solely as a result of contributing to this account.

(b) Funds donated or granted for a specific project pursuant to this subsection (7) must be accumulated in the fund until the balance of the donated or granted funds is sufficient, as determined by the department, to remediate the facility pursuant to the requirements of 75-10-721 for which the funds are donated.

(c) If the balance of the fund created in this subsection (7), as determined by the department pursuant to the requirements of 75-10-721, is not sufficient to remediate the facility within 1 year from the date of the initial contribution, all donated or granted funds, including any interest on those donated or granted funds, must be returned to the grantor.

(d) If the balance for a specific project is determined by the department to be sufficient to remediate the facility pursuant to the requirements of 75-10-721, the department shall give that site high priority for remedial action, using the funds donated under this subsection (7).

(e) This subsection (7) is not intended to delay, to interfere with, or to diminish the authority or actions of the department to investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(f) The department shall expend the funds in a manner that maximizes the application of the funds to physically remediating the specific release.

(8) (a) A person may donate in-kind services to remediate a specific release at a specific facility pursuant to subsection (7). A person who donates in-kind services is not liable under 75-10-715 solely as a result of the contribution of in-kind services.

(b) A person who donates in-kind services with respect to remediating a specific release at a specific facility is not liable under this part to any person for injuries, costs, damages, expenses, or other liability that results from the release or threatened release, including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness, loss of or damage to property, or economic loss.

(c) Immunity from liability, pursuant to subsection (8)(b), does not apply in the case of a release that is caused by conduct of the entity providing in-kind services that is negligent or grossly negligent or that constitutes intentional misconduct.

(d) When a person is liable under 75-10-715 for costs or damages incurred as a result of a release or threatened release of a hazardous or deleterious substance, the person may not avoid that liability or responsibility under 75-10-711 by subsequent donations of money or in-kind services under the provisions of subsection (7) and this subsection (8).

(e) Any donated in-kind services that are employed as part of a remedial action pursuant to this subsection (8) must be approved by the department as appropriate remedial action. *(Bracketed language in subsection (4)(j)(ii) terminates June 30, 2038—sec. 6, Ch. 196, L. 2025; subsection (4)(j) terminates June 30, 2038—sec. 3, Ch. 196, L. 2025.)*

History: En. Sec. 2, Ch. 711, L. 1985; amd. Sec. 11, Ch. 711, L. 1985; amd. Sec. 2, Ch. 555, L. 1987; amd. Sec. 1, Ch. 675, L. 1989; amd. Sec. 4, Ch. 709, L. 1989; amd. Sec. 53, Ch. 16, L. 1991; amd. Sec. 51, Ch. 112, L. 1991; amd. Sec. 1, Ch. 752, L. 1991; amd. Sec. 45, Ch. 349, L. 1993; amd. Sec. 1, Ch. 452, L. 1995; amd. Sec. 1, Ch. 86, L. 1997; amd. Sec. 6, Ch. 415, L. 1997; amd. Sec. 1, Ch. 326, L. 2001; amd. Sec. 2, Ch. 199, L. 2003; amd. Sec. 1, Ch. 355, L. 2005; amd. Sec. 2, Ch. 425, L. 2005; amd. Sec. 11, Ch. 432, L. 2007; amd. Sec. 22, Ch. 486, L. 2009; amd. Sec. 2, Ch. 387, L. 2015; amd. Sec. 5, Ch. 317, L. 2017; amd. Sec. 11, Ch. 320, L. 2017; amd. Sec. 1, Ch. 196, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 196, L. 2025. Amendment effective July 1, 2025, and terminates June 30, 2038.

Extension of Termination Date: Section 3, Ch. 196, L. 2025, amended sec. 5, Ch. 387, L. 2015, by extending the termination date imposed by Ch. 387 to June 30, 2038. Effective July 1, 2025.

Cross-References

Disposition of taxes, 15-37-117.

Fund structure, 17-2-102.

75-10-705. Short title. This part may be cited as the "Comprehensive Environmental Cleanup and Responsibility Act".

History: En. Sec. 1, Ch. 709, L. 1989.

75-10-706. Purpose — intent. (1) The purposes of this part are to:

(a) protect the public health and welfare of all Montana citizens against the dangers arising from releases of hazardous or deleterious substances;

(b) encourage private parties to clean up sites within the state at which releases of hazardous or deleterious substances have occurred, resulting in adverse impacts on the health and welfare of the citizens of the state and on the state's natural, environmental, and biological systems; and

(c) provide for funding to study, plan, and undertake the rehabilitation, removal, and cleanup of sites within the state at which no voluntary action has been taken.

(2) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Comprehensive Environmental Cleanup and Responsibility Act. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

History: En. Sec. 2, Ch. 709, L. 1989; amd. Sec. 16, Ch. 361, L. 2003; amd. Sec. 1, Ch. 342, L. 2013.

75-10-707. Information gathering and access. (1) The department may undertake any investigative or other information-gathering action that it considers necessary or appropriate for determining the need for remedial action, choosing or taking a remedial action, or otherwise enforcing the provisions of this part.

(2) Any authorized officer, employee, or representative of the department may require a person who has or may have information relevant to a release or threatened release of a hazardous or deleterious substance to furnish, upon request, any information or documents relating to but not limited to the following matters:

(a) the identification, nature, and quantity of a hazardous or deleterious substance that has been or is being generated, treated, stored, or disposed of at or transported from a facility;

(b) the nature or extent of a release or threatened release of a hazardous or deleterious substance at or from a facility;

(c) information relating to the ability of a person to pay for or to perform a cleanup; and

(d) any other information relevant to the department's determination of the appropriate remedial action to be taken or to the enforcement of this part.

(3) For purposes of assisting the department in acquiring information relevant to the need for, the determination of, or the taking of remedial action or otherwise enforcing the provisions of this part, any authorized officer, employee, or representative of the department is authorized to:

(a) enter or have access at reasonable times to any facility or other place or property where:

(i) a hazardous or deleterious substance may be or has been generated, stored, treated, disposed of, or transported from;

(ii) there has been or may be a release of a hazardous or deleterious substance;

(iii) records or other relevant information regarding a release or threatened release is located;

(iv) entry is necessary to determine the need for any appropriate remedial action; or

(v) entry is necessary to effectuate a remedial action under this part; and

(b) inspect and obtain samples from the facility or other place or property referred to in subsection (3)(a) or from any location where a suspected hazardous or deleterious substance may be located. Any authorized officer, employee, or representative of the department is authorized to inspect and obtain samples of containers or labeling for suspected hazardous or deleterious substances. Each inspection must be completed with reasonable promptness. If the authorized officer, employee, or representative obtains samples, before leaving the premises that person shall give to the owner, operator, tenant, or other person in charge of the place from which the samples were obtained a receipt describing the sample obtained and, if requested, a portion of each sample. A copy of the results of any analysis made of the samples must be furnished promptly to the owner, operator, tenant, or other person in charge if that person can be located.

(4) The department may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents relating to the matters in subsections

(2)(a) through (2)(d). The method for service of subpoenas and payment of witness fees and mileage is the same as that required in civil actions in the district courts of the state. In case of a refusal to obey a subpoena issued and served upon a person pursuant to this subsection, the district court for a district in which the person is found, resides, or transacts business, upon application of the department and after notice to the person, has jurisdiction to issue an order requiring the person to appear and either give testimony or produce documents, or both, before a hearings officer. A failure to obey the order of the court may be punished by the court as a contempt.

(5) If consent is not granted regarding a request made by an authorized officer, employee, or representative under this section, the director of the department may issue an order directing compliance with the request.

(6) The department may commence a civil action to compel compliance with an order issued pursuant to this section.

(7) In any action commenced pursuant to subsection (6) when the court determines that there may be an imminent and substantial threat to public health, safety, or welfare or the environment, the court shall enjoin any activity that constitutes a failure to comply with the order and shall direct compliance with the order unless, under the circumstances of the case, the order is arbitrary and capricious or otherwise not in accordance with law.

(8) Persons subject to the requirements of this section may make a written claim of confidentiality for information unique to the owner or operator of a facility that would, if disclosed, reveal methods or processes entitled to protection as trade secrets. The claim of confidentiality must be clearly designated on the materials at the time they are obtained by the department. If the department accepts the characterization, it shall maintain that information as confidential. Information describing physical or chemical characteristics of hazardous or deleterious substances that have been or may be released into the environment are not considered confidential. The department has access to and may use any trade secret information in carrying out the activities of this part as may be necessary to protect the public health, safety, or welfare or the environment while maintaining the information as confidential.

History: **En. Sec. 5, Ch. 709, L. 1989; amd. Sec. 270, Ch. 42, L. 1997.**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Right of privacy, Art. II, sec. 10, Mont. Const.
Uniform Trade Secrets Act, Title 30, ch. 14, part 4.

75-10-708 through 75-10-710 reserved.

75-10-711. Remedial action — orders — penalties — judicial proceedings. (1) The department may take remedial action whenever:

(a) there has been a release or there is a substantial threat of a release into the environment that may present an imminent and substantial endangerment to the public health, safety, or welfare or to the environment; and

(b) none of the persons who are liable or potentially liable under 75-10-715(1) and who have been given the opportunity by letter to properly and expeditiously perform the appropriate remedial action will properly and expeditiously perform the appropriate remedial action. Any person liable under 75-10-715(1) shall take immediate action to contain, remove, and abate the release.

(2) Whenever the department is authorized to act pursuant to subsection (1) or has reason to believe that a release has occurred or is about to occur, the department may undertake remedial action in the form of any investigation, monitoring, survey, testing, or other information gathering as authorized by 75-10-707 that is necessary and appropriate to identify the existence, nature, origin, and extent of the release or the threat of release and the extent and imminence of the danger to the public health, safety, or welfare or to the environment.

(3) Except as provided in 75-10-712, the department is authorized to draw on the fund to take action under subsection (1) if it has made diligent good faith efforts to determine the identity of the person or persons liable for the release or threatened release and:

(a) is unable to determine the identity of the liable person or persons in a manner consistent with the need to take timely remedial action; or

(b) a person or persons determined by the department to be liable or potentially liable under 75-10-715(1) have been informed in writing of the department's determination and have been requested by the department to take appropriate remedial action but are unable or unwilling to take action in a timely manner; and

(c) the written notice informs the person that if subsequently found liable pursuant to 75-10-715(1), the person may be required to reimburse the fund for the state's remedial action costs and may be subject to penalties pursuant to this part.

(4) Whenever the department is authorized to act pursuant to subsection (1), it may issue to any person liable under 75-10-715(1) cease and desist, remedial, or other orders as may be necessary or appropriate to protect the public health, safety, or welfare or the environment.

(5) (a) A person who violates or fails to comply with or refuses to comply with an order issued under 75-10-707 or this section may, in an action brought to enforce the order, be assessed a civil penalty of not more than $10,000 for each day in which a violation occurs or a failure or refusal to comply continues. In determining the amount of any penalty assessed, the court may take into account:

(i) the nature, circumstances, extent, and gravity of the noncompliance;

(ii) with respect to the person liable under 75-10-715(1):

(A) the person's ability to pay;

(B) any prior history of violations;

(C) the degree of culpability; and

(D) the economic benefit or savings, if any, resulting from the noncompliance; and

(iii) any other matters as justice may require.

(b) Civil penalties collected under subsection (5)(a) must be deposited into the environmental quality protection fund established in 75-10-704.

(6) A court has jurisdiction to review an order issued under 75-10-707 or this section only in the following actions:

(a) an action under 75-10-715 to recover remedial action costs or penalties or for contribution;

(b) an action to enforce an order issued under 75-10-707 or this section;

(c) an action to recover a civil penalty for violation of or failure or refusal to comply with an order issued under 75-10-707 or this section; or

(d) an action by a person to whom an order has been issued to determine the validity of the order, only if the person has been in compliance and continues in compliance with the order pending a decision of the court.

(7) In considering objections raised in a judicial action regarding orders issued under this part, the court shall uphold and enforce an order issued by the department unless the objecting party can demonstrate, on the administrative record, that the department's decision to issue the order was arbitrary and capricious or otherwise not in accordance with law.

(8) Instead of issuing a notification or an order under this section, the department may bring an action for legal or equitable relief in the district court of the county where the release or threatened release occurred as may be necessary to abate any imminent and substantial endangerment to the public health, safety, or welfare or to the environment resulting from the release or threatened release.

(9) If a state or federal administrative or judicial order is issued relative to a facility, the order and any remedial activity conducted pursuant to the order may be admissible in a civil action pertaining to the facility or property adjacent to or allegedly impacted by the facility provided that the reviewing court in its discretion determines the order to be relevant and the probative value is not substantially outweighed by the danger of unfair prejudice. Admission of this evidence does not make the department a necessary party to the action. Remedial action performed in accordance with this part is intended to provide for the protection of the environmental life support system from degradation and to prevent unreasonable depletion and degradation of natural resources.

(10) The department may take remedial action pursuant to subsection (1) at a site that is regulated under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510, if the department determines that remedial action is necessary to carry out the purposes of this part.

(11) The department may take remedial action as provided for in 75-10-743(12).

History: En. Sec. 3, Ch. 711, L. 1985; amd. Sec. 6, Ch. 709, L. 1989; amd. Sec. 2, Ch. 752, L. 1991; amd. Sec. 2, Ch. 490, L. 1995; amd. Sec. 1, Ch. 539, L. 1997; amd. Sec. 1, Ch. 383, L. 2001; amd. Sec. 2, Ch. 342, L. 2013; amd. Sec. 1, Ch. 119, L. 2015; amd. Sec. 37, Ch. 535, L. 2021; amd. Sec. 2, Ch. 572, L. 2021; amd. Sec. 1, Ch. 127, L. 2023.

Cross-References

Injunctions, Title 27, ch. 19.

Nuisances — public and private, Title 27, ch. 30.

75-10-712. Emergency action. If the department determines that immediate response to an imminent threat to public health, safety, or welfare or the environment is necessary to avoid substantial injury or damage to persons, property, or resources, remedial action may be taken pursuant to 75-10-711(1) without the prior written notice required by 75-10-711(3). The department shall give subsequent written notice to a person who is liable or potentially liable under 75-10-715(1) within 30 days after the action is taken, describing the circumstances that required the action to be taken without prior notice.

History: En. Sec. 4, Ch. 711, L. 1985; amd. Sec. 7, Ch. 709, L. 1989; amd. Sec. 2, Ch. 383, L. 2001.

75-10-713. Public notice of remedial action, administrative order, or consent decree — comments — meeting — response. (1) (a) Except as provided in 75-10-712, before final approval by the director of the department of any administrative order on consent, issued pursuant to 75-10-711, or before judicial approval of a consent decree issued pursuant to this part, the department shall:

(i) publish a notice and brief description of the proposed order or decree in a daily newspaper of general circulation in the area affected and make copies of the proposal available to the public;

(ii) provide at least 30 days (or whatever additional time the department may in its discretion grant upon written request) for submission of written comments regarding the proposed order or decree and upon written request by 10 or more persons or by a group having 10 or more members (but not including a liable person), conduct a public meeting at or near the facility for the purpose of receiving verbal comment regarding the proposed order or decree; and

(iii) consider and respond to relevant written or verbal comments properly submitted during the comment period or at the public meeting.

(b) The administrative record supporting the department's approved order or decree must contain the department's response summary prepared pursuant to subsection (1)(a)(iii).

(2) Except as provided in 75-10-712, upon making a final decision regarding the proposed remedial action, order, or decree, the department shall publish notice, as provided under subsection (1), and make copies of the final decision on the approved order or decree available to the public.

(3) Except as provided in 75-10-712, the department shall:

(a) notify the county commissioners and governing bodies of cities, towns, and consolidated local governments impacted by a proposed remedial action; and

(b) at the request of the county commissioners or the governing body of a city or town or of a consolidated local government impacted by a remedial action, conduct a public meeting.

History: En. Sec. 15, Ch. 709, L. 1989; amd. Sec. 3, Ch. 752, L. 1991.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

75-10-714. Administrative penalties. (1) In lieu of proceeding under 75-10-711(5), the department may assess penalties of not more than $1,000 a day for each violation against a person liable under 75-10-715(1) for a release or threat of release who has failed or refused to comply with an order issued by the department pursuant to 75-10-711(4) or against a person who has failed or refused to comply with an order issued by the department pursuant to 75-10-707(5).

(2) In determining the amount of any penalty assessed pursuant to this section, the department shall take into account the nature, circumstances, extent, and gravity of the noncompliance and, with respect to the person liable under 75-10-715(1):

(a) the person's ability to pay;

(b) any prior history of violations;

(c) the degree of culpability;

(d) the economic benefit or savings, if any, resulting from the noncompliance; and

(e) any other matters that justice may require.

(3) An administrative penalty may not be collected pursuant to this section unless the person charged with the noncompliance is given notice and opportunity for a hearing with respect to the noncompliance. The hearing is before the board of environmental review. A hearing may be requested by submitting a written request stating the reason for the request within 30 days after receipt of the notice of penalty assessment.

(4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section.

(5) Administrative penalties collected under this section must be deposited in the environmental quality protection fund established in 75-10-704.

History: En. Sec. 9, Ch. 709, L. 1989; amd. Sec. 3, Ch. 79, L. 2001.

75-10-715. Liability — reimbursement and penalties — proceedings — defenses and exclusions. (1) Except as provided in 70-30-323 and 75-10-742 through 75-10-751, notwithstanding any other provision of law, and subject only to the defenses set forth in subsection (5) and the exclusions set forth in subsection (7), the following persons are jointly and severally liable for a release or threatened release of a hazardous or deleterious substance from a facility:

(a) a person who owns or operates a facility where a hazardous or deleterious substance was disposed of;

(b) a person who at the time of disposal of a hazardous or deleterious substance owned or operated a facility where the hazardous or deleterious substance was disposed of;

(c) a person who generated, possessed, or was otherwise responsible for a hazardous or deleterious substance and who, by contract, agreement, or otherwise, arranged for disposal or treatment of the substance or arranged with a transporter for transport of the substance for disposal or treatment; and

(d) a person who accepts or has accepted a hazardous or deleterious substance for transport to a disposal or treatment facility.

(2) A person identified in subsection (1) is liable for the following costs:

(a) all remedial action costs incurred by the state; and

(b) damages for injury to, destruction of, or loss of natural resources caused by the release or threatened release, including the reasonable technical and legal costs of assessing and enforcing a claim for the injury, destruction, or loss resulting from the release, unless the impaired natural resources were specifically identified as an irreversible and irretrievable commitment of natural resources in an approved final state or federal environmental impact statement or other comparable approved final environmental analysis for a project or facility that was the subject of a governmental permit or license and the project or facility was being operated within the terms of its permit or license.

(3) If the person liable under subsection (1) fails, without sufficient cause, to comply with a department order issued pursuant to 75-10-711(4) or to properly provide remedial action upon notification by the department pursuant to 75-10-711(3), the person may be liable for penalties in an amount not to exceed two times the amount of any costs incurred by the state pursuant to this section.

(4) The department may initiate civil proceedings in district court to recover remedial action costs, natural resource damages, or penalties under subsections (1), (2), and (3). Proceedings to recover costs and penalties must be conducted in accordance with 75-10-722. Venue for any action to recover costs, damages, or penalties lies in the county where the release occurred or where the person liable under subsection (1) resides or has its principal place of business.

(5) A person has a defense and is not liable under subsections (1), (2), and (3) if the person can establish by a preponderance of the evidence that:

(a) the department failed to provide notice to the person claiming the defense when required by 75-10-711. Establishment of this defense only prohibits the department from collecting those costs incurred or encumbered by the department prior to providing notice to the person and does not provide the person a defense to any other liability.

(b) the release did not emanate from any vessel, vehicle, or facility to which the person contributed any hazardous or deleterious substance or over which the person had any ownership, authority, or control and was not caused by any action or omission of the person;

(c) the release or threatened release occurred solely as a result of:

(i) an act or omission of a third party other than either an employee or agent of the person; or

(ii) an act or omission of a third party other than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the person, if the person establishes by a preponderance of the evidence that the person:

(A) exercised due care with respect to the hazardous or deleterious substance concerned, taking into consideration the characteristics of the hazardous or deleterious substance in light of all relevant facts and circumstances; and

(B) took precautions against foreseeable acts or omissions of a third party and the consequences that could foreseeably result from those acts or omissions;

(d) the release or threatened release occurred solely as the result of an act of God or an act of war;

(e) the release or threatened release was from a facility for which a permit had been issued by the department, the hazardous or deleterious substance was specifically identified in the permit, and the release was within the limits allowed in the permit;

(f) in the case of assessment of penalties under subsection (3), factors beyond the control of the person prevented the person from taking timely remedial action; or

(g) the person transported only household refuse, unless that person knew or reasonably should have known that the hazardous or deleterious substance was present in the refuse.

(6) (a) For the purpose of subsection (5)(c)(ii), the term "contractual relationship" includes but is not limited to land contracts, deeds, or other instruments transferring title or possession, unless the real property on which the facility is located was acquired by the person after the disposal or placement of the hazardous or deleterious substance on, in, or at the facility and one or more of the following circumstances is also established by the person by a preponderance of the evidence:

(i) At the time the person acquired the facility, the person did not know and had no reason to know that a hazardous or deleterious substance that is the subject of the release or threatened release was disposed of on, in, or at the facility.

(ii) The person is a governmental entity that acquired the facility by escheat, lien foreclosure, or through any other involuntary transfer or acquisition or through the exercise of eminent domain authority by purchase or condemnation pursuant to Title 70, chapter 30.

(iii) The person acquired the facility by inheritance or bequest.

(b) In addition to establishing one or more of the circumstances in subsection (6)(a)(i) through (6)(a)(iii), the person shall establish that the person has satisfied the requirements of subsection (5)(c)(i) or (5)(c)(ii).

(c) To establish that the person had no reason to know, as provided in subsection (6)(a)(i), the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of assessing this inquiry, the following must be taken into account:

(i) any specialized knowledge or experience on the part of the person;

(ii) the relationship of the purchase price to the value of the property if uncontaminated;

(iii) commonly known or reasonably ascertainable information about the property;

(iv) the obviousness of the presence or the likely presence of contamination on the property; and

(v) the ability to detect the contamination by appropriate inspection.

(d) (i) Subsections (5)(b) and (5)(c) or this subsection (6) may not diminish the liability of a previous owner or operator of the facility who would otherwise be liable under this part.

(ii) Notwithstanding this subsection (6), if the previous owner or operator obtained actual knowledge of the release or threatened release of a hazardous or deleterious substance at the facility when the person owned the real property and then subsequently transferred ownership of the property to another person without disclosing the knowledge, the previous owner is liable

under subsections (1), (2), and (3) and a defense under subsection (5)(b) or (5)(c) is not available to that person.

(e) This subsection (6) does not affect the liability under this part of a person who, by any act or omission, caused or contributed to the release or threatened release of a hazardous or deleterious substance that is the subject of the action relating to the facility.

(7) A person has an exclusion and is not liable under this section if:

(a) the person generated or disposed of only household refuse, unless the person knew or reasonably should have known that the hazardous or deleterious substance was present in the refuse;

(b) the person owns or operates real property where hazardous or deleterious substances have come to be located solely as a result of subsurface migration in an aquifer from a source or sources outside the person's property, provided that the following conditions are met:

(i) the owner or operator did not cause, contribute to, or exacerbate the release or threatened release of any hazardous or deleterious substances through any act or omission. The failure to take affirmative steps to mitigate or address contamination that has migrated from a source outside the owner's or operator's property does not, in the absence of exceptional circumstances, constitute an omission by the owner or operator.

(ii) the person who caused, contributed to, or exacerbated the release or threatened release of any hazardous or deleterious substance is not and was not an agent or employee of the owner or operator and is not or was not in a direct or indirect contractual relationship with the owner or operator, unless the department provides a written determination that an existing or proposed contractual relationship is an insufficient basis to establish liability under this section;

(iii) there is no other basis of liability under subsection (1) for the owner or operator for the release or threatened release of a hazardous or deleterious substance; and

(iv) the owner or operator cooperates with the department and all persons conducting department-approved remedial actions on the property, including granting access and complying with and implementing all required institutional controls;

(c) the person owns or occupies real property of 20 acres or less for residential purposes, provided that the following conditions are met:

(i) the person did not cause, contribute to, or exacerbate the release or threatened release of any hazardous or deleterious substance through any act or omission;

(ii) the person uses or allows the use of the real property for residential purposes. This exclusion does not apply to any person who acquires or develops real property for commercial use or any use other than residential use.

(iii) at the time the person purchased or occupied the real property, there were no visible indications of contamination on the surface of the real property;

(iv) the person cooperates with the department and all persons conducting department-approved remedial actions on the property, including granting access and complying with and implementing all required institutional controls; and

(v) there is no other basis of liability under subsection (1) for the owner or occupier for the release or threatened release of a hazardous or deleterious substance.

(8) A person is liable under this section if the department provides substantial credible evidence that the person fails to satisfy any element of each exclusion in subsections (7)(a) through (7)(c).

(9) The liability of a fiduciary under the provisions of this part for a release or a threatened release of a hazardous or deleterious substance from a facility held in a fiduciary capacity may not exceed the assets held in the fiduciary capacity that are available to indemnify the fiduciary unless the fiduciary is liable under this part independent of the person's ownership or actions taken in a fiduciary capacity.

(10) A person who holds indicia of ownership in a facility primarily to protect a security interest is not liable under subsections (1)(a) and (1)(b) for having participated in the management of a facility within the meaning of 75-10-701(15)(b) because of any one or any combination of the following:

(a) holding an interest in real or personal property when the interest is being held as security for payment or performance of an obligation, including but not limited to a mortgage, deed of trust, lien, security interest, assignment, pledge, or other right or encumbrance against

real or personal property that is furnished by the owner to ensure repayment of a financial obligation;

(b) requiring or conducting financial or environmental assessments of a facility or a portion of a facility, making financing conditional upon environmental compliance, or providing environmental information or reports;

(c) monitoring the operations conducted at a facility or providing access to a facility to the department or its agents or to remedial action contractors;

(d) having the mere capacity or unexercised right to influence a facility's management of hazardous or deleterious substances;

(e) giving advice, information, guidance, or direction concerning the administrative and financial aspects, as opposed to day-to-day operational aspects, of a borrower's operations;

(f) providing general information concerning federal, state, or local laws governing the transportation, storage, treatment, and disposal of hazardous or deleterious substances and concerning the hiring of remedial action contractors;

(g) engaging in financial workouts, restructuring, or refinancing of a borrower's obligations;

(h) collecting rent, maintaining utility services, securing a facility from unauthorized entry, or undertaking other activities to protect or preserve the value of the security interest in a facility;

(i) extending or denying credit to a person owning or in lawful possession of a facility;

(j) in an emergency, requiring or undertaking activities to prevent exposure of persons to hazardous or deleterious substances or to contain a release;

(k) requiring or conducting remedial action in response to a release or threatened release if prior notice is given to the department and the department approves of the remedial action; or

(l) taking title to a facility by foreclosure, provided that the holder of indicia of ownership, from the time the holder acquires title, undertakes to sell, re-lease property held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or otherwise divest itself of the property in a reasonably expeditious manner, using whatever commercially reasonable means are relevant or appropriate with respect to the facility and taking all facts and circumstances into consideration and provided that the holder does not:

(i) outbid or refuse a bid for fair consideration for the property or outbid or refuse a bid that would effectively compensate the holder for the amount secured by the facility;

(ii) worsen the contamination at the facility;

(iii) incur liability under subsection (1)(c) or (1)(d) by arranging for disposal of or transporting hazardous or deleterious substances; or

(iv) engage in conduct described in subsection (11).

(11) The protection from liability provided in subsections (9) and (10) is not available to a fiduciary or to a person holding indicia of ownership primarily to protect a security interest if the fiduciary or person through affirmative conduct:

(a) causes or contributes to a release of hazardous or deleterious substances from the facility;

(b) allows others to cause or contribute to a release of hazardous or deleterious substances; or

(c) in the case of a person holding indicia of ownership primarily to protect a security interest, actually participates in the management of a facility by:

(i) exercising decisionmaking control over environmental compliance; or

(ii) exercising control at a level comparable to that of a manager of the enterprise with responsibility for day-to-day decisionmaking either with respect to environmental compliance or substantially all of the operational, as opposed to financial or administrative, aspects of the facility.

History: En. Sec. 6, Ch. 711, L. 1985; amd. Sec. 11, Ch. 711, L. 1985; amd. Sec. 3, Ch. 555, L. 1987; amd. Sec. 10, Ch. 709, L. 1989; amd. Sec. 3, Ch. 490, L. 1995; amd. Sec. 7, Ch. 415, L. 1997; amd. Sec. 2, Ch. 437, L. 1999; amd. Sec. 2, Ch. 113, L. 2001; amd. Sec. 88, Ch. 125, L. 2001; amd. Sec. 3, Ch. 383, L. 2001; amd. Sec. 38, Ch. 535, L. 2021.

Cross-References

Fund structure, 17-2-102.

75-10-716. Definitions. As used in 75-10-717 and this section, the following definitions apply:

(1) "Emergency responder" means a public safety agency or a private entity acting under a request from or authority granted by a government agency, including law enforcement, firefighting, ambulance or medical, and civil defense, that provides services in an emergency situation.

(2) "Hazardous material incident" means a release involving a hazardous or deleterious substance that endangers property, public health, or public safety.

History: En. Sec. 1, Ch. 464, L. 1991.

75-10-717. Recovery of costs. An emergency responder has the right to recover from the responsible party the emergency responder's full costs directly related to a hazardous material incident.

History: En. Sec. 2, Ch. 464, L. 1991.

75-10-718. Liability of remedial action contractor. (1) A person who is a remedial action contractor with respect to a release or threatened release of a hazardous or deleterious substance is not liable under this part to any person for injuries, costs, damages, expenses, or other liability that results from the release or threatened release, including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness, loss or damage to property, or economic loss.

(2) Immunity from liability, pursuant to subsection (1), does not apply in the case of a release that is caused by conduct of the remedial action contractor that is negligent or grossly negligent or that constitutes intentional misconduct.

(3) This section does not affect the liability of a person under a warranty under federal, state, or common law or the liability to an employee of an employer who is a remedial action contractor under any provision of law, including any provision of a law relating to workers' compensation.

(4) A state agency or state employee or an employee of a political subdivision who provides services relating to remedial action while acting within the scope of the entity's or individual's authority as a governmental agency or employee has the same exemption from liability as is provided to the remedial action contractor under this section.

(5) The defense provided by 75-10-715(5)(c) is not available to a person liable under 75-10-715(1) with respect to remedial action costs or damages caused by an act or omission of a remedial action contractor.

(6) Except as provided in subsections (4) and (5), this section does not affect the liability under this part of a person other than a remedial action contractor.

(7) This section does not affect the plaintiff's burden of establishing liability under this part.

(8) This section does not minimize the liability, lessen the standard of liability, or otherwise shield from liability a potentially liable person under 75-10-715 or section 107 of CERCLA for costs or damages incurred as a result of a release or threatened release of a hazardous or deleterious substance.

History: En. Sec. 8, Ch. 709, L. 1989; amd. Sec. 54, Ch. 16, L. 1991; amd. Sec. 4, Ch. 490, L. 1995.

75-10-719. Settlement — bar to contribution liability. (1) A person who has resolved that person's liability to the state arising under 75-10-715 or section 107(a)(1) through (a)(4) of CERCLA, 42 U.S.C. 9607(a)(1) through (a)(4), in an administrative or judicially approved settlement is not liable for claims for contribution regarding matters addressed in the settlement. The settlement does not discharge any of the other potentially liable persons unless its terms provide a discharge. The terms of the settlement may reduce the potential liability of the other potentially liable persons by the amount of the settlement.

(2) If the state has obtained less than complete relief from a person who has resolved that person's liability to the state in an administrative or judicially approved settlement, the state may bring an action against any other person who has not resolved that person's liability.

(3) A person who has resolved, in whole or in part, that person's liability to the state for the release or for remedial action costs in an administrative or judicially approved settlement may seek contribution from a person who is not party to a settlement referred to in subsection (1).

(4) Whenever practicable and in the public interest, as determined by the director of the department, the department may, as promptly as possible, reach a final settlement with a potentially liable or liable person under 75-10-715 in an administrative or civil action under 75-10-711 if the settlement involves only a minor portion of the remedial action costs at the facility concerned and, in the judgment of the department, taking into account the toxicity of the hazardous or deleterious substances involved and the person's contribution of hazardous or deleterious substances in relation to the total volume of hazardous or deleterious substances at the facility, the conditions in any of the following subsections (4)(a) through (4)(d) are met:

(a) the person is one whose liability is based solely on 75-10-715(1)(c) or (1)(d) and who presents substantial credible evidence that the person contributed less than 0.002% of the total volume or less than 100 gallons or 200 pounds of materials containing hazardous or deleterious substances at a facility that received hazardous or deleterious substances from multiple contributors. The department may not require the payment of remedial action costs from this person.

(b) (i) the person is one whose liability is based solely on 75-10-715(1)(c) or (1)(d) and who presents substantial credible evidence that the person arranged for disposal or treatment of less than 5% of the total quantity of solid waste or hazardous or deleterious substances disposed of at a facility that received solid waste or hazardous or deleterious substances from multiple contributors.

(ii) For the purposes of subsection (5)(a) and this subsection (4)(b) only, the term "solid waste" means:

(A) all putrescible and nonputrescible wastes, including garbage, rubbish, refuse, or ashes;

(B) sludge from sewage treatment plants, water supply plants, or air pollution control facilities;

(C) construction and demolition wastes;

(D) dead animals, including offal;

(E) discarded home and industrial appliances; and

(F) wood products or wood byproducts and inert materials.

(c) (i) the person:

(A) is the owner of the real property on or in which the facility is located;

(B) did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous or deleterious substance at the facility; and

(C) did not contribute to the release or threat of release of a hazardous or deleterious substance at the facility through any action or omission.

(ii) This subsection (4)(c) does not apply if the person purchased the real property with actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous or deleterious substance.

(d) the person presents substantial credible evidence that the person has a defense under 75-10-715(5).

(5) When reaching a settlement under subsection (4)(b), (4)(c), or (4)(d), the department may require the payment of remedial action costs not to exceed two times the person's reasonably projected liability for remedial action costs as determined by the department. Except as provided in subsection (6), the settlement must contain a reservation of rights clause in the event that the department obtains new information showing that the settling person no longer qualifies for a settlement because:

(a) the solid waste or hazardous or deleterious substances contributed by the person was of a greater volume or toxicity than originally estimated; or

(b) the settlement was reached under subsection (4)(c) and, after settlement, the department finds that the person had actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous or deleterious substance.

(6) A person who agrees to a liability settlement may avoid the reservation of rights clause under subsection (5) by paying remedial action costs in the amount of four times the person's reasonably projected liability for remedial action costs as determined by the department.

(7) All funds received as a result of settlements under this section must be paid in the following order of priority:

(a) to the department as reimbursement for its remedial action costs at the facility;

(b) to liable persons as reimbursement for remedial action costs at the facility. In the event of an allocation under 75-10-742 through 75-10-751, the reimbursement must be in proportion to each liable person's share of liability as determined under the provisions of 75-10-750 or 75-10-751;

(c) the remainder, if any:

(i) to the orphan share fund provided in 75-10-743 if the facility went through the allocation process provided in 75-10-742 through 75-10-751; or

(ii) to the fund provided in 75-10-704 if the facility did not undergo the allocation process provided in 75-10-742 through 75-10-751.

(8) Any person who enters into a settlement under this section may not be subject to or assigned a share in the allocation process provided in 75-10-742 through 75-10-751.

(9) As part of an administrative or judicially approved settlement agreement, the department may require the liable person to provide financial assurance, in an amount determined by the department, to ensure the long-term operation and maintenance of the remedial action site. The liable person shall provide the financial assurance by any one method or combination of methods satisfactory to the department, including but not limited to insurance, guarantee, performance or other surety bond, letter of credit, qualification as a self-insurer, or other demonstration of financial capability.

History: En. Sec. 11, Ch. 709, L. 1989; amd. Sec. 4, Ch. 752, L. 1991; amd. Sec. 8, Ch. 415, L. 1997.

75-10-720. Condemnation — creation of state lien. (1) Whenever the department determines that property upon which a release or threatened release of a hazardous or deleterious substance has occurred may present an imminent and substantial endangerment to the public health, safety, or welfare or the environment, the department may condemn the property for public use to mitigate the threat. The taking of the property must be conducted in accordance with the procedure set forth in Title 70, chapter 30.

(2) All costs, penalties, and natural resource damages for which a person has been judicially determined to be liable to the state pursuant to 75-10-715 constitute a lien in favor of the state upon all property and rights to the property that belong to the person.

(3) The lien imposed by this section arises at the time notice incorporating a description of the property subject to the remedial action and an identification of the amount of costs, penalties, and natural resource damages is filed with the clerk and recorder of the county in which the real property is located. A copy of the notice must be served by certified mail upon the liable person.

(4) The costs, penalties, and natural resource damages constituting the lien may be recovered in an action in the district court for the district in which the property is located or in which the remedial action is occurring or has occurred. This section does not affect the right of the state to bring an action against a person to recover all costs, penalties, and natural resource damages for which that person is liable under this part or any other provision of state or federal law.

(5) The lien must continue until the liability for the costs and damages incurred as a result of the release of a hazardous or deleterious substance is satisfied.

(6) If the department expends money from the fund for orphan share remedial action costs at a facility or for a facility at which a reimbursed orphan share exists, the state has a lien upon the facility for the unrecovered costs. The lien:

(a) may not exceed the increase in fair market value of the property attributable to the unfunded portion of the remedial action at the time of a subsequent sale or other disposition of the property;

(b) arises at the time costs are first incurred by the department with respect to a remedial action at the facility;

(c) must be filed according to subsection (3); and

(d) continues until the earlier of satisfaction of the lien or recovery of all remedial action costs incurred at the facility.

(7) Payment of any liens under this section must be deposited in one of the two accounts from which the remedial action costs originated, including the fund established in 75-10-704 or the orphan share fund established in 75-10-743.

History: En. Sec. 12, Ch. 709, L. 1989; amd. Sec. 9, Ch. 415, L. 1997; amd. Sec. 89, Ch. 125, L. 2001.

75-10-721. Degree of cleanup required — permit exemption — financial assurance. (1) A remedial action performed under this part or a voluntary cleanup under 75-10-730 through 75-10-738 must attain a degree of cleanup of the hazardous or deleterious substance and control of a threatened release or further release of that substance that assures protection of public health, safety, and welfare and of the environment.

(2) In approving or carrying out remedial actions performed under this part, the department:

(a) except as provided in subsection (4), shall require cleanup consistent with applicable state or federal environmental requirements, criteria, or limitations;

(b) may consider substantive state or federal environmental requirements, criteria, or limitations that are relevant to the site conditions; and

(c) shall select remedial actions, considering present and reasonably anticipated future uses, giving due consideration to institutional controls, that:

(i) demonstrate acceptable mitigation of exposure to risks to the public health, safety, and welfare and the environment;

(ii) are effective and reliable in the short term and the long term;

(iii) are technically practicable and implementable;

(iv) use treatment technologies or resource recovery technologies if practicable, giving due consideration to engineering controls; and

(v) are cost-effective.

(3) In selecting remedial actions, the department shall consider the acceptability of the actions to the affected community, as indicated by community members and the local government.

(4) The department may select a remedial action that does not meet an applicable state environmental requirement, criteria, or limitation under any one of the following circumstances:

(a) The remedial action is an interim measure and will become part of a total remedial action that will attain the applicable requirement, criteria, or limitation.

(b) Compliance with the applicable requirement, criteria, or limitation will result in greater risk to human health and the environment than other remedial action alternatives.

(c) Compliance with the applicable requirement, criteria, or limitation is technically impracticable from an engineering perspective.

(d) The remedial action will attain a standard of performance that is equivalent to that required under the otherwise applicable requirement, criteria, or limitation through use of another method or approach.

(e) Compliance with the requirement would not be cost-effective.

(5) For purposes of this section, cost-effectiveness must be determined through an analysis of incremental costs and incremental risk reduction and other benefits of alternatives considered, taking into account the total anticipated short-term and long-term costs of remedial action alternatives considered, including the total anticipated cost of operation and maintenance activities.

(6) The department may exempt any portion of a remedial action that is conducted entirely on site from a state or local permit that would, in the absence of the remedial action, be required if the remedial action is carried out in accordance with the standards established under this section and this part.

(7) The department may require financial assurance from a liable person in an amount that the department determines will ensure the long-term operation and maintenance of the remedial action site. The liable person shall provide the financial assurance by any one method or combination of methods satisfactory to the department, including but not limited to insurance, guarantee, performance or other surety bond, letter of credit, qualification as a self-insurer, or other demonstration of financial capability.

History: En. Sec. 13, Ch. 709, L. 1989; amd. Sec. 5, Ch. 752, L. 1991; amd. Sec. 2, Ch. 584, L. 1995; amd. Sec. 3, Ch. 437, L. 1999.

75-10-722. Payment of state costs and penalties. (1) The department shall keep a record of the state's remedial action costs.

(2) Based on this record, the department may require a person liable under 75-10-715 to pay the amount of the state's remedial action costs, including interest and, if applicable, penalties under 75-10-715(3).

(3) If the state's remedial action costs and penalties are not paid by the liable person to the department after receipt of notice that the costs and penalties are due, the department may bring an action in the name of the state to recover the amount owed plus reasonable legal expenses.

(4) If the department provides a notice that the state's remedial action costs are due, the department shall assess and collect interest on the unpaid amount at the rate provided for in 25-9-205:

(a) after 30 days of receipt of the notice if the notice covers costs incurred during a time period that is 1 month or less;

(b) after 60 days of receipt of the notice if the notice covers costs incurred during a time period that is more than 1 month and not more than 3 months;

(c) after 90 days of receipt of the notice if the notice covers costs incurred during a time period that is more than 3 months and not more than 6 months; and

(d) after 120 days of receipt of the notice if the notice covers costs incurred during a time period that is more than 6 months.

(5) An action to recover remedial action costs and interest may be brought under this section at any time after any remedial action costs and interest have been incurred, and the court may enter a declaratory judgment on liability for remedial action costs and interest that is binding on any subsequent action or actions to recover further remedial action costs and interest. The court may disallow costs or damages only if the person liable under 75-10-715 can show on the record that the costs are not reasonable and are not consistent with this part. The court may disallow the associated interest if it determines, based on the record, that the liable person can show that the costs are not reasonable.

(6) An initial action brought under 75-10-715(4) or a contribution action for costs incurred under this part must be commenced within 6 years after initiation of physical onsite construction of the final permanent remedy.

(7) Remedial action costs, interest, and any penalties recovered by the state under 75-10-715 must be deposited into the environmental quality protection fund established in 75-10-704.

History: En. Sec. 14, Ch. 709, L. 1989; amd. Sec. 5, Ch. 490, L. 1995; amd. Sec. 3, Ch. 584, L. 1995; amd. Sec. 2, Ch. 326, L. 2001; amd. Sec. 1, Ch. 257, L. 2011.

75-10-723. Agreements and administrative orders on consent to perform remedial action. (1) To expedite effective remedial actions and minimize litigation, the department, in its discretion and whenever practicable and in the public interest, may negotiate and enter into an agreement or an administrative order on consent with any person, including the owner or operator of the facility from which a release emanates, to perform a remedial action if the department determines that the action will be properly done by the person. The agreement must contain terms and conditions that the department in its discretion determines to be appropriate.

(2) Whenever the department enters into an administrative order on consent under this section for remedial action or for assessment or payment of natural resource damages, that administrative order on consent must be available for public comment for at least 30 days.

(3) A decision of the department to enter into or not enter into agreements or administrative orders on consent under this section is not subject to judicial review.

History: En. Sec. 16, Ch. 709, L. 1989; amd. Sec. 2, Ch. 539, L. 1997.

75-10-724. Private right of action. Any person who receives notice under 75-10-711, who is held jointly and severally liable under 75-10-715, or who initiates a voluntary cleanup under the provisions of 75-10-730 through 75-10-738 may bring a private right of action, including a claim for contribution or declaratory relief, against any other person who is liable or potentially liable under 75-10-715 for the recovery of remedial action costs. In resolving contribution claims, the court shall allocate remedial action costs among the liable persons based on the factors set out in 75-10-750.

History: En. Sec. 17, Ch. 709, L. 1989; amd. Sec. 10, Ch. 415, L. 1997.

75-10-725. Immunity of fire agency and employees for hazardous or deleterious substance cleanup. A governmental fire agency organized under Title 7, chapter 33, and the employees of the agency are not liable for civil damages, except damages for gross negligence or willful or wanton misconduct, for their acts or omissions that are directly related to the hazardous material incident.

History: En. Sec. 1, Ch. 367, L. 1995; amd. Sec. 44, Ch. 449, L. 2007.

75-10-726. Citizens suit. (1) Any person may commence a civil action to compel compliance by any liable or potentially liable person under 75-10-715 alleged to be in violation of a rule, notice letter, order, or department-approved remedial action required pursuant to a notice letter or order under this chapter.

(2) At least 60 days before commencing the action, the person shall give notice of intent to sue to all liable or potentially liable persons under 75-10-715 who are contemplated to be defendants in the proposed action.

(3) An action may not be commenced under subsection (1) if the liable or potentially liable person is diligently coming into compliance with the rule, notice letter, order, or department-approved remedial action plan or if the department has commenced and is diligently prosecuting an action to require compliance with the rule, notice letter, order, or department-approved remedial action plan.

History: En. Sec. 11, Ch. 415, L. 1997.

75-10-727. Institutional controls. (1) An owner of real property may, with department approval, restrict the use of the owner's real property to mitigate the risk posed to the public health, safety, and welfare and the environment by imposing on the real property, without conveying the property or creating a dominant and servient estate, an appropriate institutional control.

(2) An institutional control restricting present and future real property rights is placed on a property by filing a written instrument evidencing the restrictions to be placed on the use of the property with the county clerk in the county in which the property is located.

(3) An institutional control that restricts real property runs with the land and is binding on all successors in interest to real property until the institutional control is removed.

(4) An institutional control must be removed if there is not an unacceptable risk posed to public health, safety, and welfare and the environment. An owner may request department approval to remove all or a portion of the institutional controls from the real property. The department shall review the request and provide the owner with its decision to approve or deny the request within 120 days from the department's receipt of the request. If the department denies the request, it shall provide the owner with a written explanation of the denial. A department decision to deny the request may be appealed to the board of environmental review and conducted as a contested case proceeding pursuant to Title 2, chapter 4.

(5) If the department or the board approves an owner's request to remove all or a portion of the institutional controls, the owner shall file the approval with the county clerk in the county in which the real property is located.

History: En. Sec. 4, Ch. 437, L. 1999.

75-10-728. Remedial action costs. (1) If a potentially liable person or assignee recovers remedial action costs at a particular site from a financially responsible party, reimbursement from the orphan share is proportionally reduced by the amount of remedial action costs recovered, less any litigation expenses, including attorney fees and costs.

(2) The department may, in defending the orphan share, initiate a court action against a potentially liable party, an affiliate, or another financially responsible party to recover the orphan's share.

History: En. Sec. 5, Ch. 437, L. 1999.

75-10-729. Restoration damages. (1) Except as provided in subsections (2) and (3), this section applies to civil claims brought in judicial proceedings on behalf of individuals and entities for the recovery of restoration damages to address impacts to real property caused by releases of hazardous or deleterious substances.

(2) Restoration damages may be awarded only for a claim alleging contamination of special use property and may be obtained only in accordance with the definitions and other

requirements set forth in this section. The plaintiff bears the burden of proof to show that the property meets the definition of special use property.

(3) Restoration damages may not be awarded or used to alter an interim or final remedial action that has been or will be undertaken on, or will benefit, a special use property pursuant to any of the following authorities:

(a) a federal administrative order issued pursuant to 42 U.S.C. 9601, et seq., as of March 27, 2021;

(b) a state administrative order issued pursuant to this part;

(c) a judicially approved consent decree; or

(d) any other interim or final remedial action plan approved by the department pursuant to state statutory or administrative law.

(4) (a) Restoration damages awarded pursuant to subsection (2), exclusive of awards of attorney fees and costs, may be used only to conduct remedial and corrective action necessary to restore the special use property for which the damages were awarded. Restoration must commence within 3 years from the date the judgment is paid or settlement proceeds are received.

(b) If any awarded restoration damages remain after completion of the restoration work, the surplus must be refunded to the defendant. If the defendant is no longer viable or cannot be found, the funds must be remitted to the department.

(5) Any party may request that a court awarding restoration damages also order that those damages be deposited in a segregated trust or escrow account at a commercial bank or trust company to ensure compliance with subsection (4)(a). The plaintiff may create a trust or escrow account to be overseen by a qualified professional to restore the special use property.

(6) Nothing in this section precludes the award of other damages allowed under common law and statute.

(7) As used in this section, the following definitions apply:

(a) "Qualified professional" means a person who possesses sufficient specific education, training, and experience necessary to exercise professional judgment to design and oversee implementation of a restoration plan.

(b) "Restoration damages" means the amount of compensation determined reasonably necessary by a trier of fact to restore a contaminated special use property to its function, use, or condition prior to the contamination on which a civil claim is based, unless contamination was present at the time the plaintiff acquired the special use property, in which case the term means the amount of compensation determined necessary by a trier of fact to restore a contaminated special use property to the function, use, or condition that existed at the time the plaintiff acquired the special use property.

(c) "Special use property" means real property contaminated by a release of a hazardous or deleterious substance that is found by a trier of fact to have objectively reasonable personal value to the plaintiff not reflected in the market value of the property or to have unique public, historic, cultural, or religious value not reflected in the market value of the property.

History: En. Sec. 1, Ch. 572, L. 2021.

75-10-730. Short title. Sections 75-10-730 through 75-10-738 may be cited as the "Voluntary Cleanup and Redevelopment Act".

History: En. Sec. 4, Ch. 584, L. 1995.

75-10-731. Purpose — legislative declaration. (1) (a) The purposes of 75-10-730 through 75-10-738 are to provide for the protection of the public health, welfare, and safety and of the environment and to foster the cleanup, transfer, reuse, or redevelopment of facilities where releases or threatened releases of hazardous or deleterious substances exist.

(b) The legislature further declares that this program is intended to permit and encourage voluntary cleanup of facilities where releases or threatened releases of hazardous or deleterious substances exist by providing interested persons with a method of determining what the cleanup responsibilities will be for reuse or redevelopment of existing facilities.

(2) The legislature further intends that this voluntary program:

(a) encourage and facilitate prompt cleanup activities;

(b) eliminate impediments to the sale or redevelopment of facilities where releases or threatened releases of hazardous or deleterious substances exist; and

(c) minimize administrative processes and costs.

History: En. Sec. 5, Ch. 584, L. 1995.

75-10-732. Eligibility. (1) A facility where there has been a release or threatened release of a hazardous or deleterious substance that may present an imminent and substantial endangerment to the public health, safety, or welfare or the environment may be eligible for voluntary cleanup procedures under this part, except for facilities that meet one of the following criteria at the time of application for a voluntary cleanup plan:

(a) a facility that is listed or proposed for listing on the national priorities list pursuant to 42 U.S.C. 9601, et seq.;

(b) a facility for which an order has been issued or consent decree has been entered into pursuant to this part;

(c) a facility that is the subject of an agency order or an action filed in district court by any state agency that addresses the release or threatened release of a hazardous or deleterious substance; or

(d) a facility where the release or threatened release of a hazardous or deleterious substance is regulated by the Montana Hazardous Waste Act and regulations under that act; or

(e) a facility that is the subject of pending action under this part because the facility has been issued a notice commencing a specified period of negotiations on an administrative order on consent.

(2) Notwithstanding the provisions of subsections (1)(b) through (1)(e), the department may agree to accept and may approve an application for a voluntary cleanup plan for a facility.

(3) The department may determine that a facility that is potentially eligible for voluntary cleanup exhibits complexities regarding protection of public health, safety, and welfare and the environment and that the complexities should be addressed under an administrative order or consent decree pursuant to this part. This determination may be made only after consultation with any person desiring to conduct a voluntary cleanup at the facility.

(4) If an applicant who submits an application for a voluntary cleanup plan disagrees with the department's decision to reject the filing of the application under subsection (1) or (3) or disagrees with the department's decision to disapprove the voluntary cleanup plan submitted pursuant to 75-10-736, the applicant may, within 30 days of receipt of the department's written decision pursuant to 75-10-736, submit a written request for a hearing before the board of environmental review. In reviewing a department decision to reject an application under subsection (1) or (3) or to disapprove a voluntary cleanup plan submitted pursuant to 75-10-736, the board shall apply the standards of review specified in 2-4-704. The hearing must be held within 2 months at the regular meeting of the board or at the time mutually agreed to by the board, the department, and the applicant. The hearing and any appeals must be conducted in accordance with the contested case proceedings pursuant to Title 2, chapter 4, parts 6 and 7. A hearing before the board may not be requested regarding a decision of the department made pursuant to subsection (2).

History: En. Sec. 6, Ch. 584, L. 1995; amd. Sec. 3, Ch. 539, L. 1997; amd. Sec. 66, Ch. 7, L. 2001.

75-10-733. Voluntary cleanup plan and reimbursement of remedial action costs. (1) Any person may submit an application for the approval of a voluntary cleanup plan to the department under the provisions of this section.

(2) A voluntary cleanup plan must include:

(a) an environmental assessment of the facility that includes the information required in 75-10-734;

(b) a remediation proposal that includes the information required in 75-10-734 and that meets the requirements of 75-10-721; and

(c) the written consent of current owners of the facility or property to allow:

(i) access to the facility by the applicant and its agents and the department; and

(ii) implementation of the voluntary cleanup plan when a remediation proposal includes the information required in 75-10-734 and meets the requirements of 75-10-721.

(3) (a) The applicant shall reimburse the department for any remedial action costs that the state incurs in the review and oversight of a voluntary cleanup plan.

(b) If the applicant does not reimburse the department for its remedial action costs in the time required under 75-10-722, the department may discontinue the review or approval process of the voluntary cleanup plan or void its approval of the voluntary cleanup plan. The department may also take action to recover its outstanding costs.

(4) The department may approve a voluntary cleanup plan that provides for phases of remediation or that addresses only a portion of the facility. To the extent that the original environmental assessment required under 75-10-734 addresses subsequent phases of remediation, the applicant may rely on that assessment when submitting voluntary cleanup plans for subsequent phases of remediation.

History: En. Sec. 7, Ch. 584, L. 1995; amd. Sec. 1, Ch. 117, L. 2009; amd. Sec. 1, Ch. 58, L. 2019.

75-10-734. Voluntary cleanup plans — requirements. (1) The department may only accept voluntary cleanup plans under 75-10-730 through 75-10-738 that are prepared by a qualified environmental professional. A qualified environmental professional is a person with education, training, and experience in preparing environmental studies and assessments.

(2) An environmental assessment described in this section must include the following information:

(a) the legal description of the facility and a map identifying the location and size of the facility and relevant features, such as property boundaries, surface topography, surface and subsurface structures, and utility lines;

(b) the physical characteristics of the facility and areas contiguous to the facility, including the location of any surface water bodies and ground water aquifers;

(c) the location of any wells located on the site or on areas within a one-half mile radius of the site and a description of the use of those wells;

(d) the current and reasonably anticipated future use of onsite ground and surface water;

(e) the operational history of the facility, including ownership, and the current use of the facility, including any readily available aerial photographs from within the state of Montana;

(f) the current and reasonably anticipated future uses of the facility and immediately adjacent properties;

(g) information on the methods and results of investigations concerning the nature and extent of any releases or threatened releases of hazardous or deleterious substances that have occurred at the facility and a map showing general areas and concentrations of hazardous or deleterious substances;

(h) any sampling results or other data that characterizes the soil, air, ground water, or surface water on the site;

(i) a description of the human and environmental exposure to releases or threatened releases of hazardous or deleterious substances at the facility based upon the current use of the facility and adjacent properties and any reasonably anticipated future uses of the facility; and

(j) readily available information on the environmental regulatory and compliance history of the facility, including all environmental permits.

(3) A remediation proposal must include the following information:

(a) a detailed description of the components of the remediation proposal, including, to the extent applicable:

(i) the proposed cleanup levels for the facility;

(ii) the manner in which the remediation plan satisfies the cleanup requirements of 75-10-721;

(iii) identification of sampling or treatability studies; and

(iv) a demonstration that exposures to risk affecting the public health, safety, and welfare and the environment at the facility will be substantially mitigated by the plan;

(b) a brief comparison of the remediation proposal to reasonable alternatives based on the remedy selection criteria specified in 75-10-721;

(c) a timetable for implementing the proposal and for any necessary monitoring of the facility after the proposed measures are completed;

(d) a statement that applicable health and safety regulations will be met during implementation of the remediation proposal;

(e) a description of how short-term disturbances during implementation of the remediation proposal will be minimized; and

(f) identification of any permits necessary to conduct the proposed remedies.

History: En. Sec. 8, Ch. 584, L. 1995.

75-10-735. Public participation. (1) Upon determination by the department that an application for a voluntary cleanup plan is complete pursuant to 75-10-736(1) and (2), the department shall publish a notice and brief analysis of the proposed plan in a daily newspaper of general circulation in the area affected and make the plan available to the public.

(2) The notice must provide 30 days for submission of written comments to the department regarding the plan. Upon written request by 10 or more persons, by a group composed of 10 or more members, or by a local governing body of a city, town, or county within the comment period, the department shall conduct a public meeting at or near the facility regarding the proposed voluntary cleanup plan. The meeting must be held within 45 days of the date that written notice of the department's completeness determination is provided to the applicant under 75-10-736(2).

(3) The department shall consider and respond to relevant written or verbal comments submitted during the comment period or at the public meeting.

(4) The department's decision on the final plan and the reasons for any significant modification of the final plan must be published in accordance with subsection (1).

(5) Compliance with this section is considered to satisfy the public participation requirements of Title 75, chapter 1.

History: En. Sec. 9, Ch. 584, L. 1995; amd. Sec. 2, Ch. 117, L. 2009.

Cross-References

Right of participation, Art. II, sec. 8, Mont. Const.

75-10-736. Approval of voluntary cleanup plan — time limits — content of notice — expiration of approval. (1) The department shall review for completeness, including adequacy and accuracy, in accordance with the requirements of 75-10-734, the environmental assessment component of a voluntary cleanup plan and shall provide a written completeness notice to the applicant within 30 days of receipt. The completeness notice must note all deficiencies identified in the information submitted.

(2) Once the department determines that the environmental assessment component of a voluntary cleanup plan is complete, the applicant may submit the remediation proposal component. The department shall review the remediation proposal for completeness, including adequacy and accuracy, in accordance with the requirements of 75-10-734, and shall provide a written completeness notice to the applicant within 30 days of receipt. The completeness notice must note all deficiencies identified in the information submitted.

(3) Once the department determines that the application for a voluntary cleanup plan is complete pursuant to subsections (1) and (2), the department shall provide formal written notification of approval or disapproval within 60 days unless the applicant and the department agree to an extension of the review to a date certain. The review must be limited to a review of the materials submitted by the applicant, public comments, and documents or information readily available to the department. The department shall communicate with the applicant during the review period to ensure that the applicant has the opportunity to address the public comments.

(4) (a) If the department receives five applications for review of either component of a voluntary cleanup plan in a calendar month, including applications deferred from prior months, the department may notify any additional applicants in that month that their plans must be reviewed in the order received. The 60-day period for department completeness review of deferred applications must begin on the first day of the subsequent month that each plan is eligible for review.

(b) The department shall discontinue accepting either component of voluntary cleanup applications when 15 applications are pending and are being reviewed by the department. The department shall establish a waiting list for applications and shall consider the applications in order of submittal.

(c) If the department has received multiple applications for a voluntary cleanup at the same facility, the department shall notify all of the applicants and offer them the opportunity to submit a joint application.

(5) Consistent with the provisions of 75-10-707, the department may access the facility during review of either component of the application and implementation of the voluntary

cleanup plan to confirm information provided by the applicant and verify that the cleanup is being conducted consistent with the approved plan.

(6) (a) The department shall approve a voluntary cleanup plan if the department concludes that the plan meets the requirements specified in 75-10-734 and will attain a degree of cleanup and control of hazardous or deleterious substances that complies with the requirements of 75-10-721.

(b) Except for the period necessary for the operation and maintenance of the approved remediation proposal, the department may not approve a voluntary remediation proposal that would:

(i) take longer than 60 months after department approval to achieve the cleanup levels proposed by the applicant under 75-10-734(3)(a)(i) and approved by the department; or

(ii) take longer than 120 months after department approval to achieve the cleanup levels for ground water proposed by the applicant under 75-10-734(3)(a)(i) and approved by the department, including ground water standards identified as applicable or relevant state or federal environmental requirements, criteria, or limitations pursuant to 75-10-721.

(7) If a voluntary cleanup plan is not approved by the department, the department shall promptly provide the applicant with a written statement of the reasons for denial. The denial may be appealed to the board of environmental review in accordance with the provisions of 75-10-732(4).

(8) The approval of a voluntary cleanup plan by the department applies only to conditions at the facility that are known to the department at the time of department approval. If a voluntary remediation proposal is not initiated within 12 months and, except for the period necessary for the operation and maintenance of the approved remediation proposal, is not completed within 60 months after approval by the department, the department's approval lapses. However, the department may grant an extension of the time limit for completion of the voluntary cleanup plan.

(9) If conditions are discovered during implementation of a voluntary cleanup plan that were not identified in the environmental assessment component pursuant to subsection (1), affect the risk to public health, safety, or welfare or the environment, and change the scope of the approved plan, the applicant shall notify the department within 10 days of discovery. The department may require the applicant to submit an amendment to the approved plan to address the conditions or may determine that a voluntary cleanup plan is no longer appropriate pursuant to 75-10-732(3).

(10) Departmental approval is void if the applicant or the applicant's agents:

(a) fail to materially comply with the voluntary cleanup plan;

(b) submit materially misleading information in the application or during implementation of the voluntary cleanup plan; or

(c) fail to report any newly discovered information to the department during the application process or implementation of the voluntary cleanup plan regarding releases or threatened releases of hazardous or deleterious substances within 10 days of discovery of that information.

(11) Within 60 days after completion of the approved remediation proposal described in the voluntary cleanup plan approved by the department, the applicant shall provide to the department a certification from a qualified environmental professional that the plan has been fully implemented, including all documentation necessary to demonstrate the successful implementation of the plan, such as confirmation sampling, if necessary.

(12) Except as provided in 75-10-738(2)(b), the department may not require financial assurance under this part for voluntary cleanup plans approved under this section.

(13) If a person who would otherwise not be a liable person under 75-10-715(1) elects to undertake an approved voluntary cleanup plan, the person may not become a liable person under 75-10-715(1) by undertaking a voluntary cleanup if the person materially complies with the voluntary cleanup plan approved by the department pursuant to this section.

(14) Immunity from liability under this section does not apply to a release that is caused by conduct that is negligent or grossly negligent or that constitutes intentional misconduct.

History: En. Sec. 10, Ch. 584, L. 1995; amd. Sec. 4, Ch. 539, L. 1997; amd. Sec. 3, Ch. 117, L. 2009; amd. Sec. 2, Ch. 58, L. 2019.

75-10-737. Voluntary action to preclude remedial action by department. If a party has elected to undertake an approved voluntary cleanup and is diligently proceeding to implement the plan, the department may not, except as provided in 75-10-712, take remedial action under 75-10-711 with regard to those releases or threatened releases of hazardous or deleterious substances that are addressed by the approved voluntary cleanup plan.

History: En. Sec. 11, Ch. 584, L. 1995.

75-10-738. Closure. (1) After completion of the voluntary cleanup plan, an applicant may petition the department for closure of the facility under 75-10-730 through 75-10-738.

(2) Within 60 days of receipt of a petition for closure, weather permitting, the department shall conduct a review to determine that the releases or threatened releases addressed in the voluntary cleanup plan do not pose a significant threat to public health, welfare, or safety or to the environment as determined in accordance with 75-10-721 and that the applicant has:

(a) implemented all appropriate remedial actions;

(b) if necessary, provided for long-term funding for facility maintenance or monitoring; and

(c) reimbursed the department for all remedial action costs of the voluntary cleanup.

(3) In the event that the petition for closure is not approved by the department, the department shall promptly provide the applicant with a written statement of the reasons for denial. Written notification that the petition is approved by the department must include the following language:

"Based upon the information provided by [insert name(s) of applicant(s)] concerning property located at [insert address], it is the opinion of the Montana Department of Environmental Quality that upon completion of the voluntary cleanup plan, no further action is required to ensure that this facility, when used for [insert purposes identified], is protective of existing and proposed uses and does not pose a significant risk to public health, safety, or welfare or the environment at the facility with regard to releases or threatened releases addressed in the voluntary cleanup plan. The department reserves the right to conduct or require further remedial action at this facility if a new release occurs or if the department receives new or different information than presented in the approved voluntary cleanup plan."

(4) After completion of a portion of a facility addressed in the voluntary cleanup plan, the department shall issue a letter of completion notice to the applicant if the department determines that the applicant has satisfied the requirements of subsection (2).

History: En. Sec. 12, Ch. 584, L. 1995.

75-10-739 through 75-10-741 reserved.

75-10-742. Short title. Sections 75-10-742 through 75-10-751 may be cited as the "Controlled Allocation of Liability Act".

History: En. Sec. 12, Ch. 415, L. 1997.

75-10-743. Orphan share state special revenue account — reimbursement of claims — payment of department costs. (1) There is an orphan share account in the state special revenue fund established in 17-2-102 that is to be administered by the department. Money in the account is available to the department by appropriation and, except as provided in subsections (9), (10), and (11), must be used to reimburse remedial action costs claimed pursuant to 75-10-742 through 75-10-751, to provide funding for the department of justice for investigations pursuant to its natural resource damage program, to pay costs incurred by the department in defending the orphan share, and to pay remedial action costs incurred by the department pursuant to subsection (12). Any amounts provided for investigations must be returned to the account, with interest, from the settlement proceeds of a claim made under the natural resource damage program within 30 days of receiving settlement proceeds.

(2) There must be deposited in the orphan share account:

(a) all penalties assessed pursuant to 75-10-750(12);

(b) funds received from the distribution of oil and natural gas production taxes pursuant to 15-36-331;

(c) unencumbered funds remaining in the abandoned mines state special revenue account;

(d) interest income on the account;

(e) funds received from settlements pursuant to 75-10-719(7); and

(f) funds received from reimbursement of the department's orphan share defense costs pursuant to subsection (6).

(3) If the orphan share account contains sufficient money, valid claims must be reimbursed subsequently in the order in which they were received by the department. If the orphan share account does not contain sufficient money to reimburse claims for completed remedial actions, a reimbursement may not be made and the orphan share account, the department, and the state are not liable for making any reimbursement for the costs. The department and the state are not liable for any penalties if the orphan share account does not contain sufficient money to reimburse claims, and interest may not accrue on outstanding claims.

(4) Except as provided in subsections (6) and (7), claims may not be submitted and remedial action costs may not be reimbursed from the orphan share account until all remedial actions, except for operation and maintenance, are completed at a facility.

(5) Except as provided in subsection (6), reimbursement from the orphan share account must be limited to actual documented remedial action costs incurred after the date of a petition provided for in 75-10-745. Reimbursement may not be made for attorney fees, legal costs, or operation and maintenance costs.

(6) (a) The department's costs incurred in defending the orphan share must be paid by the persons participating in the allocation under 75-10-742 through 75-10-751 in proportion to their allocated shares. The orphan share account is responsible for a portion of the department's costs incurred in defending the orphan share in proportion to the orphan share's allocated share, as follows:

(i) If sufficient funds are available in the orphan share account, the department's costs incurred in defending the orphan share must be paid from the orphan share account in proportion to the share of liability allocated to the orphan share.

(ii) If sufficient funds are not available in the orphan share account, persons participating in the allocation under 75-10-742 through 75-10-751 shall pay all the orphan share's allocated share of the department's costs incurred in defending the orphan share in proportion to each person's allocated share of liability.

(b) A person who pays the orphan share's proportional share of costs has a claim against the orphan share account and must be reimbursed as provided in subsection (3).

(c) A state agency that is liable for remedial action costs incurred has a claim against the orphan share account and must be reimbursed as provided in subsection (3). The agency may submit a claim before or after remedial action is complete. Reimbursement may not be made for attorney fees, legal costs, or operation and maintenance costs. The agency may be reimbursed only after:

(i) its liability has been determined pursuant to 75-10-742 through 75-10-751 or by a court of competent jurisdiction;

(ii) it has received a notice letter pursuant to 75-10-711; and

(iii) the department has approved the costs.

(7) (a) If the lead liable person under 75-10-746 presents evidence to the department that the person cannot complete the remedial actions without partial reimbursement and that a delay in reimbursement will cause undue financial hardship on the person, the department may allow the submission of claims and may reimburse the claims prior to the completion of all remedial actions. A person is not eligible for early reimbursement unless the person is in substantial compliance with all department-approved remedial action plans.

(b) The department may reimburse claims from a lead liable person upon completion and department approval of a report evaluating the nature and extent of contamination and a report formulating and evaluating final remediation alternatives. This early reimbursement is limited to those eligible costs incurred by the lead liable person for the preparation of the reports.

(8) A person participating in the allocation process who received funds under the mixed funding pilot program provided for in sections 14 through 20, Chapter 584, Laws of 1995, may not claim or receive reimbursement from the orphan share account for the amount of funds received under the mixed funding pilot program that are later attributed to the orphan share under the allocation process.

(9) (a) For the biennium beginning July 1, 2005, up to $1.25 million may be used by the department to pay the costs incurred by the department in contracting for evaluating the extent

of contamination and formulating final remediation alternatives for releases at the Kalispell pole and timber, reliance refinery company, and Yale oil corporation facility complex. If the department spends less than $1.25 million for those purposes, the remaining funds must be spent for remediation of the facility complex. The department may not seek recovery of the $1.25 million from potentially liable persons.

(b) The money spent pursuant to subsection (9)(a) must be credited against the amount owed by the state agency in a judgment or settlement agreement for payment of the remedial action costs at the facility for which the money was spent.

(10) (a) [After making the biennial deposit required in 75-10-704(4)(j)(ii)(A) and if sufficient funds remain,] the department shall transfer from the orphan share account to the long-term or perpetual water treatment permanent trust fund provided for in 82-4-367 $1.2 million in each fiscal year until the board of investments makes the certification pursuant to subsection (10)(b) of this section.

(b) (i) The board of investments shall monitor the long-term or perpetual water treatment permanent trust fund provided for in 82-4-367 to determine when the amount of money in the long-term or perpetual water treatment permanent trust fund will be sufficient, with future earnings, to provide a fund balance of $19.3 million on January 1, 2018.

(ii) When the board of investments makes the determination pursuant to subsection (10)(b)(i), the board of investments shall notify the department and certify to the department the amount of money, if any, that must be transferred during the fiscal year in which the board of investments makes its determination pursuant to subsection (10)(b)(i) in order to provide a fund balance of $19.3 million on January 1, 2018.

(iii) In the fiscal year that the board of investments makes its determination and notifies the department, the department shall transfer only the amount certified by the board of investments, if any, and may not make additional transfers during subsequent fiscal years.

(c) After July 1, 2018, the department shall transfer $1.2 million in each fiscal year from the orphan share state special revenue account to the environmental quality protection fund provided in 75-10-704.

(11) The orphan share account is subject to legislative fund transfers.

(12) Except as provided in subsection (13), the department may use the orphan share account to:

(a) take remedial action at a facility where there has been a release or there is a substantial threat of a release into the environment that may present an imminent and substantial endangerment to the public health, safety, or welfare or to the environment and there is no readily apparent person who is financially viable and potentially liable under 75-10-715 to conduct the remedial action; or

(b) fund the administration of data collection, the monitoring of the performance of remedial action, and the initial assessment of a facility to determine whether that facility may be closed or delisted.

(13) The department may not use for data collection, initial assessments, or monitoring pursuant to subsection (12)(b) more than 20% of the funds appropriated from the orphan share account for the bienniums beginning July 1, 2015, and ending June 30, 2025. For the bienniums beginning July 1, 2025, no more than 15% of the funds appropriated from the orphan share account may be used for data collection, initial assessments, or monitoring pursuant to subsection (12)(b).

(14) The department shall report annually to the environmental quality council in accordance with 5-11-210 the amount of funds from the orphan share account used pursuant to subsection (12), the type of expenditures made, and the identity and location of facilities addressed. *(Bracketed language in subsection (10)(a) terminates June 30, 2038—sec. 6, Ch. 196, L. 2025; subsection (10)(c) terminates June 30, 2038—sec. 3, Ch. 196, L. 2025.)*

History: En. Sec. 13, Ch. 415, L. 1997; amd. Sec. 95, Ch. 51, L. 1999; amd. Sec. 6, Ch. 460, L. 2001; amd. Sec. 7, Ch. 20, Sp. L. August 2002; amd. Sec. 3, Ch. 199, L. 2003; amd. Sec. 1, Ch. 368, L. 2003; amd. Sec. 11, Ch. 522, L. 2003; amd. Sec. 2, Ch. 278, L. 2005; amd. Sec. 2, Ch. 355, L. 2005; amd. Sec. 3, Ch. 425, L. 2005; amd. Sec. 12, Ch. 432, L. 2007; amd. Sec. 1, Ch. 266, L. 2009; amd. Sec. 9, Ch. 312, L. 2011; amd. Sec. 2, Ch. 119, L. 2015; amd. Sec. 3, Ch. 387, L. 2015; amd. Sec. 11, Ch. 351, L. 2017; amd. Sec. 102, Ch. 261, L. 2021; amd. Sec. 2, Ch. 196, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 196, L. 2025. Amendment effective July 1, 2025, and terminates June 30, 2038.

Extension of Termination Date: Section 3, Ch. 196, L. 2025, amended sec. 5, Ch. 387, L. 2015, by extending the termination date imposed by Ch. 387 to June 30, 2038. Effective July 1, 2025.

Cross-References

Prohibited payments, Art. VIII, sec. 14, Mont. Const.

Disposition of taxes, 15-37-117.

75-10-744. Eligibility — statute of limitations. (1) Except for a facility that is listed on the national priorities list pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq., a facility listed on the priority list established pursuant to 75-10-702 is eligible for the allocation process under 75-10-742 through 75-10-751.

(2) Only liability for remedial action costs is eligible for allocation and reimbursement from the orphan share fund. Allocation of liability and reimbursement of costs for natural resource damages is not permitted under 75-10-742 through 75-10-751.

(3) Remedial action costs incurred prior to the date of the potentially liable person's written petition to the department as provided in 75-10-745 are not eligible for reimbursement from the orphan share fund.

(4) Only one allocation will be allowed for each facility unless:

(a) the department determines that an additional allocation is appropriate due to:

(i) the existence of more than one discrete unit of contamination at the facility;

(ii) the discovery of new releases after remedial actions at the facility are complete; or

(iii) other factors the department determines appropriate.

(b) all the liable or potentially liable persons under 75-10-715 agree in writing that an orphan share does not exist for the proposed allocation and either of the conditions in subsection (4)(a)(i) or (4)(a)(ii) is met.

(5) A liable or potentially liable person under 75-10-715 may not file a cost recovery or contribution action against any person participating in the allocation process provided for in 75-10-742 through 75-10-751 until the allocation process is complete. The statute of limitations on the filing of cost recovery or contribution actions is tolled from the first date of a petition for allocation on a facility until 30 days after the submittal of the allocation report provided for in 75-10-750, or until 30 days following the expiration of the time period for appeal or the final decision on appeal.

History: En. Sec. 14, Ch. 415, L. 1997.

Cross-References

Statutes of limitations, Title 27, ch. 2.

75-10-745. Allocation of liability — process initiation. (1) For a facility at which the department has initiated a remedial action under 75-10-711 through the issuance of a notice letter prior to July 1, 1997, any person determined to be potentially liable under 75-10-715 may petition the department in writing to initiate the allocation process. The right to participate in the allocation process is waived if the written petition is not provided to the department prior to the completion of remedial actions, except for operation and maintenance, at the facility.

(2) For a facility at which the department has not initiated a remedial action through the issuance of a notice letter under 75-10-711, any person potentially liable under 75-10-715 who has received approval of a voluntary cleanup plan under 75-10-730 through 75-10-738 may petition the department in writing to initiate the allocation process. The right to participate in the allocation process is waived if the written petition is not provided to the department prior to the completion of remedial actions, except for operation and maintenance, at the facility.

(3) For a facility at which the department initiates a remedial action through the issuance of a notice letter under 75-10-711 after July 1, 1997, any person potentially liable under 75-10-715 may petition the department in writing within 60 days of the date of the notice letter to initiate the allocation process. Any potentially liable person under 75-10-715 who does not provide a written petition to the department within this timeframe waives the right to participate in the allocation process and remains liable as provided in 75-10-715. The notice letter sent by the department must advise that a failure to petition the department for allocation as provided in this subsection will result in a waiver of the right to participate in the allocation process.

(4) The allocation process may be initiated and may proceed upon written petition of one or more potentially liable persons.

(5) Prior to the initiation of discovery as provided in 75-10-747, all persons who participate in the allocation process shall agree in writing that the allocator's decision is binding, subject only to the provisions of 75-10-750(9) and the appeal provisions of 75-10-751.

(6) All liable or potentially liable persons under 75-10-715 who do not participate in the allocation process under 75-10-742 through 75-10-751 remain liable as provided in 75-10-715.

(7) Upon receipt of a written petition under subsection (1) or (2) or when initiating actions at a facility without a prior notice letter under subsection (3), the department shall:

(a) make a diligent good faith effort to determine the identity of the person or persons liable for the release or threatened release; and

(b) issue notice letters to one or more of the persons it identifies as potentially liable under 75-10-715. If a person petitions the department to initiate the allocation process as provided for in subsection (8), the department shall issue notice letters or nomination letters pursuant to subsection (9) to the persons it identified as potentially liable under 75-10-715 who were not previously given notice.

(8) A person who receives a notice letter may, within 60 days from the date of the notice letter, petition the department in writing to participate in an allocation process and provide the department with the identity of other potentially liable persons under 75-10-715 who were not given notice by the department. When identifying additional potentially liable persons, the person given notice shall provide to the department a statement and credible evidence showing that there is a basis in law and fact to determine that the identified person is potentially liable under 75-10-715.

(9) Within 30 days of receipt of the information provided for in subsection (8), the department may issue a notice letter to an identified person whom the department determines is a potentially liable person under 75-10-715 or to a person whom the department identified in subsection (7) and who was not previously given notice. If the department does not issue a notice letter to an identified person, the department shall issue the person a nomination letter indicating that the person has been identified as potentially liable under 75-10-715. The nomination letter must state that the person has the right to participate in the allocation process and that if the person does not participate and is found liable, the person remains subject to liability as provided in 75-10-715. If the newly noticed or nominated person chooses to participate in the allocation process, the person shall provide a written petition of the person's intent to participate in the allocation process to the department within 30 days of the date of the notice or nomination letter. A failure to petition the department for allocation as provided in this subsection results in a waiver of the right to participate in the allocation process.

(10) If a person nominated under subsection (9) cannot be readily located, the department shall, within 30 days of receipt of the information provided for in subsection (8), publish one notice of the person's nomination, along with the information contained in a nomination letter under subsection (9), in a newspaper of general circulation in the county where all or a portion of the facility is located. The notice must state that the person has 30 days from the date of the notice to petition the department, in writing, to participate in the allocation process. A failure to petition the department for allocation as provided in this subsection results in a waiver of the right to participate in the allocation process.

(11) If one or more potentially liable persons petition in writing for an allocation process under subsection (1), (2), or (3) and the department determines that the facility has a potential orphan share, the department shall:

(a) publish a notice and brief description of the facility in a newspaper of general circulation in the area affected and provide at least 30 days for submission of public comment on the identification of potentially liable persons under 75-10-715; and

(b) notify interested persons and the county commissioners of each county in which all or a portion of the facility is located and provide at least 30 days for submission of comments on the identification of potentially liable persons under 75-10-715.

(12) If a nominated person participates in the allocation and the person is assigned a zero share of liability by the allocator, that person's reasonable costs of participating in the

allocation, including attorney fees, must be borne by the person who proposed the addition of the nominated person to the allocation.

(13) If the department anticipates that a facility may have an orphan share, the department shall represent the orphan share in the allocation process. If the state is a potentially liable person under 75-10-715, an agency or entity other than the department shall represent the state in the allocation process.

(14) Except as provided in subsection (15), whenever the department is involved in allocation processes on five facilities, other allocation processes may be stayed before the discovery stage provided in 75-10-747. Upon completion of an allocation provided in 75-10-750 or 75-10-751, execution of a stipulated agreement under 75-10-750, or a default to liability as provided in 75-10-715 for one of the five facilities, the department shall notify the potentially liable persons for the facility on the waiting list that has the earliest date of written petition. Discovery under 75-10-747 must begin within 10 days of department notification.

(15) A stay on the allocation process may not occur under subsection (14) if all persons participating in the allocation process agree in writing that there is no orphan share and that the state is not a potentially liable person under 75-10-715. The agreement is binding upon all noticed or nominated persons.

(16) If, after initiating the process, a potentially liable person elects to discontinue participation in the process, the person remains subject to liability as provided in 75-10-715.

History: En. Sec. 15, Ch. 415, L. 1997; amd. Sec. 4, Ch. 383, L. 2001; amd. Sec. 2, Ch. 266, L. 2009.

75-10-746. Emergency actions — remedial action requirements — designation of lead person — enforcement. (1) If the department determines that immediate response to an imminent threat to public health, safety, or welfare or the environment is necessary to avoid substantial injury or damage to persons, property, or resources, the department may require any potentially liable person to take remedial actions without the prior written notice required by 75-10-711(3). The department has 30 days to comply with the notification requirements provided in 75-10-711(3) and 75-10-745 when requiring emergency remedial actions.

(2) Within 30 days of the issuance of the notice letters, the noticed persons shall designate a lead person who shall conduct remedial actions at the facility. Upon request of the noticed persons and for good cause shown, the department may grant a 30-day extension of time to identify the lead person.

(3) If the department determines that the identified lead person is financially or otherwise incapable of completing remedial actions required by the department, the department shall notify all noticed persons of this determination in writing and request that another lead person be designated within 15 days.

(4) The designated lead person shall undertake all remedial actions required by the department.

(5) If the noticed persons do not designate an approved lead person within the timeframes provided under subsection (2) or (3), the department shall designate a lead person to undertake required remedial actions.

(6) If the department finds that the lead person has not complied with the requirements of a notice letter, order, stipulated agreement, or any department-approved remedial action plan, the department shall notify all potentially liable persons of the noncompliance.

(7) If the noncompliance continues for 30 days after the date of the notice provided in subsection (6), the potentially liable persons have not demonstrated that the noncompliance is due to good cause, and the facility is a maximum or high-priority facility on the department's priority list established pursuant to 75-10-702, the department shall take one or more of the following actions:

(a) issue a unilateral order requiring the potentially liable persons to comply with the requirements of the notice letter, order, stipulated agreement, or department-approved remedial action plan;

(b) file a civil action as provided in 75-10-711;

(c) conduct the required remedial actions and seek cost recovery and penalties as provided in 75-10-711;

(d) file a cost recovery action as provided in 75-10-722; or

(e) void approval of the voluntary cleanup plan as provided in 75-10-736.

(8) If the noncompliance continues for 30 days after the date of the notice provided in subsection (6), the potentially liable persons have not demonstrated that the noncompliance is due to good cause, and the facility is not a maximum or high-priority facility on the department's priority list, the department may take one or more of the actions provided for in subsection (7).

(9) For purposes of subsections (7), (8), and (10), "good cause" means factors beyond a person's control that include severe weather conditions, third-party interference, an act of God, or an act of war. Before a person may claim good cause due to third-party interference, the person shall show that the person used reasonable efforts to obtain cooperation or compliance from the third party.

(10) If the lead person fails to comply with the requirements of a notice letter, order, stipulated agreement, or other department-approved remedial action plan, the facility and all noticed persons remain subject to liability as provided in 75-10-715 unless another person assumes the lead role in implementing the required remedial actions or the lead person can establish that the noncompliance is due to good cause.

History: En. Sec. 16, Ch. 415, L. 1997.

75-10-747. Discovery. (1) Each person participating in the allocation process for a facility may conduct discovery for a period of not more than 90 days from the date of the last notice or nomination letter. Discovery requests by each person participating in the allocation process, including the orphan share representative, are limited to the following unless otherwise agreed to by all persons participating in the allocation, including the orphan share representative:

(a) 5 1-day oral depositions not to exceed 8 hours each;

(b) 25 written interrogatories, including subparts;

(c) 50 requests for admission; and

(d) 50 requests for production of documents.

(2) The persons participating in the allocation process may extend the discovery period for up to 30 days if all persons agree to the extension in writing.

(3) Any participating person who is not responsive to discovery requests or who does not participate in the subsequent allocation proceeding and is allocated a share of liability remains subject to liability as provided in 75-10-715.

History: En. Sec. 17, Ch. 415, L. 1997.

75-10-748. Preallocation negotiations. (1) After discovery pursuant to 75-10-747 closes, all persons participating in the allocation process shall conduct good faith settlement negotiations for a period of 30 days.

(2) The participating potentially liable persons may use an impartial mediator when conducting settlement negotiations.

(3) If a settlement is reached under subsection (1), the persons shall execute a stipulated agreement as provided in 75-10-750.

(4) If a stipulated agreement is not executed as provided in 75-10-750, the persons shall select an allocator as provided in 75-10-749.

History: En. Sec. 18, Ch. 415, L. 1997.

75-10-749. Allocator selection — payment of fees. (1) If the preallocation negotiations pursuant to 75-10-748 fail to produce a stipulated agreement within the timeframe provided in 75-10-748, the participating persons shall select an allocator within 30 days after the preallocation negotiations end. All participating persons shall agree on the selected allocator.

(2) Before selection or appointment as an allocator, a person shall disclose all conflicts of interest, including whether the allocator is or has been a relative, attorney, agent, employee, creditor, or contractor of, or in any manner is or has been interested financially or personally with, any person involved in the allocation.

(3) If the participating persons are unable to agree on an allocator within the required 30 days, one or more of the participating persons shall apply for judicial resolution, within 10 days, to the district court in the county where the release occurred or where any potentially liable person under 75-10-715 resides or has a principal place of business or in the district court of the first judicial district. If an application to the district court is not made within 10 days, all persons remain subject to liability as provided in 75-10-715 and the allocation process ends.

(4) Upon selection or appointment of the allocator, the lead person shall advance, if required by the allocator, up to $5,000 toward the allocator's expenses. Any expenses accrued by the allocator for legal or technical expertise must be approved in advance by all the participating persons. The allocator's fees and reasonable expenses must be divided among the participating liable persons, except the orphan share, in proportion to their allocated shares. The orphan share fund established in 75-10-743 is not responsible for any portion of the allocator's fees and expenses.

History: En. Sec. 19, Ch. 415, L. 1997.

75-10-750. Allocating liability. (1) Upon selection or appointment, the allocator shall establish the process and schedule for determining the allocation, including the length and scope of any documents to be presented.

(2) The participating persons shall submit to the allocator and to each other a statement of position and exhibits of a factual nature. Each person's statement must identify the factors listed in subsection (5) that the person believes are relevant to allocation of liability for the facility.

(3) The allocator may convene the participating persons as the allocator believes necessary to clarify the facts and may pose additional questions, interview any person or the person's representative, and impose presumptions concerning missing information. The allocator may seek department assistance with information gathering pursuant to 75-10-707.

(4) The allocator may not engage in ex parte communications with any person or the person's representative.

(5) The allocator shall allocate each participating and nonparticipating person's share of liability based only on information presented or collected during the allocation process and, taking into account facility characteristics, shall apportion liability on a percentage basis according to the following factors:

(a) the extent to which the person caused the release of the hazardous or deleterious substance;

(b) the extent to which the person's contribution to the release of a hazardous or deleterious substance can be distinguished;

(c) the amount or volume of hazardous or deleterious substance and the amount contributed by the person;

(d) the relative hazard of the hazardous or deleterious substance contributed by the person, including volatility, carcinogenicity, mobility, persistence, reactivity, and toxicity;

(e) the degree of past and present cooperation by the person with the government to prevent harm to the public health, safety, or welfare and the environment, including participation in remedial actions occurring concurrently with the allocation process and compliance and cooperation with discovery pursuant to 75-10-747;

(f) what the person knew or should have known of the hazardous nature of the substance, the risk associated with that substance, and proper waste disposal practices;

(g) the circumstances of the property acquisition, including the documented price paid and discounts granted;

(h) the person's knowledge of or acquiescence to waste generation, storage, handling, treatment, or disposal;

(i) the length of time of ownership, operation, generation, or transportation;

(j) any violations of or noncompliance with health and environmental regulations, including permit violations or violations relating to public notification;

(k) the degree to which a person providing publicly owned landfill or sewer and water systems had or has a reasonable ability to control disposed materials and the person's degree of care in maintaining those services;

(l) the person's financial or economic benefit from:

(i) ownership or operation of the facility;

(ii) the generation, transportation, or disposal of the hazardous or deleterious substance; and

(iii) cleanup of the facility;

(m) whether the person exercised due diligence in generating, transporting, or disposing of hazardous or deleterious substances and the person's control over those activities; and

(n) other equitable factors that are appropriate.

(6) Within 60 days of selection or appointment, the allocator shall submit to the department and all noticed and nominated persons a written allocation report that allocates each person's share of liability and that documents the rationale for the percentage of liability allocated to each person.

(7) The allocator or the participating persons may extend the allocation proceeding by up to 30 days if agreed to by the allocator and all the participating persons.

(8) Within 30 days of the date of the allocation report, the persons who participated in the allocation and who were allocated a share of liability, except for the orphan share, shall prepare and sign a stipulated agreement that contains:

(a) the percentage share of liability for each person as determined by the allocator;

(b) procedures for paying for the orphan share prior to reimbursement from the orphan share fund;

(c) a waiver of contribution rights against all persons who are potentially liable for the remedial action as well as a waiver of any rights to challenge any settlement that the department enters into with any other potentially liable person;

(d) covenants not to sue and provisions regarding performance or adequate assurance of performance of remedial actions;

(e) how remedial actions will be conducted;

(f) a penalty provision in accordance with subsection (12);

(g) acknowledgment of contribution protection, consistent with 75-10-719(1), regarding matters addressed in the settlement; and

(h) provisions detailing how the persons signing the stipulated agreement should receive reimbursement from the orphan share fund for any remedial action costs incurred by the persons in excess of their allocated share.

(9) If the department determines that the stipulated agreement does not satisfy the requirements of subsection (8), the liable persons who participated in the allocation remain subject to liability as provided in 75-10-715.

(10) A person who did not participate in the allocation but who was assigned a share of liability may sign the stipulated agreement prepared according to subsection (8).

(11) Any liable person allocated a share of liability who does not sign the stipulated agreement remains subject to liability as provided in 75-10-715.

(12) Any liable person who signs the stipulated agreement and fails to comply with the terms of the stipulated agreement shall pay, in addition to the person's share of remedial action costs, a penalty of two times the amount of the person's allocated share of liability. Any funds received must be applied to the facility's orphan share and any funds in excess of the facility's orphan share amount must be deposited in the orphan share fund established under 75-10-743.

(13) If a liable person becomes bankrupt or defunct after the stipulated agreement is signed and before remedial actions are complete at the facility, that person's share of liability becomes an orphan share.

History: En. Sec. 20, Ch. 415, L. 1997.

75-10-751. Appeal of allocator's decision. (1) A person may appeal the allocator's decision to district court within 30 days of the date of the allocation report. Venue lies in the county where the release occurred or where the liable person resides or has a principal place of business or in the first judicial district.

(2) The allocator's decision must be upheld unless the person appealing the decision demonstrates that the decision was:

(a) made upon unlawful procedure;

(b) affected by other error of law;

(c) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(d) arbitrary and capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion or was fraudulent.

(3) If the appeal is successful, the district court shall allocate the liability of the potentially liable persons using the factors outlined in 75-10-750.

(4) After decision on the appeal, all liable persons shall submit a stipulated agreement as provided in 75-10-750 to the department based on the court order.

History: En. Sec. 21, Ch. 415, L. 1997.

75-10-752. Repealed. Sec. 2, Ch. 368, L. 2003.

History: En. Sec. 22, Ch. 415, L. 1997.

75-10-753 through 75-10-755 reserved.

75-10-756. Prohibition of covenant not to sue — exceptions. (1) Except as provided in subsections (2) and (3), a person may not include a covenant not to sue in a contract with a property owner for remedial action of a listed site.

(2) A contract between a property owner and a person conducting a remedial action on a listed site may, by mutual agreement, include a covenant not to sue if the person conducting the remedial action has:

(a) provided the property owner with a copy of a plan approved by the department or the United States environmental protection agency describing all of the remedial actions that will occur on the property owner's land; and

(b) held a public meeting in the county where the listed site is located to collect public comment on the remedial action plan.

(3) This section does not apply to contracts or access agreements in which remuneration of at least $1,000 is a part of the contract or access agreement.

(4) As used in this section, the following definitions apply:

(a) "Department" means the department of environmental quality provided for in 2-15-3501.

(b) "Listed site" means one or more tracts of land, buildings, structures, or other facilities containing a hazardous or deleterious substance that have been listed by the department pursuant to this part or placed on the national priorities list pursuant to 42 U.S.C. 9601, et seq.

History: En. Sec. 1, Ch. 368, L. 2009.

75-10-757. Civil penalty. (1) A district court may assess a civil penalty of not more than $1,000 per day upon a person that violates the provisions of 75-10-756.

(2) An action under this section is not a bar to enforcement by injunction or other appropriate civil remedy.

(3) The penalty provided for in subsection (1) is recoverable in an action brought by the property owner. The action must be filed in the district court of the county in which the violation occurred.

History: En. Sec. 2, Ch. 368, L. 2009.

Part 8
Integrated Waste Management

Part Cross-References

Duty to maintain clean and healthful environment, Art. IX, sec. 1, Mont. Const.
Energy-related and ecological tax incentives, Title 15, ch. 32.
Notice of motor oil recycling center, 75-10-1101.

75-10-801. Short title. This part may be cited as the "Montana Integrated Waste Management Act".

History: En. Sec. 1, Ch. 222, L. 1991.

75-10-802. Definitions. As used in this part, the following definitions apply:

(1) "Composting" means the controlled biological decomposition of organic matter into humus.

(2) "Department" means the department of environmental quality provided for in 2-15-3501.

(3) "Integrated waste management" means the coordinated use of a priority of waste management methods, as specified in 75-10-804.

(4) "Postconsumer material" means only those paper products generated by a consumer that have served their intended end uses and have been separated or diverted from the solid waste stream.

(5) "Recycling" means all activities involving the collection of recyclable material, including but not limited to glass, paper, or plastic; the processing of recyclables to prepare them for resale; the marketing of recovered material for use in the manufacture of similar or different products; and the purchase of products containing recycled material.

(6) "Reuse" means using a product in its original form for a purpose that is similar to or different from the purpose for which it was originally designed.

(7) "Source reduction" means the design, manufacture, purchase, or use of a material or product, including packaging, to reduce its amount or toxicity before it enters the solid waste stream.

(8) "Special waste" means solid waste that has unique handling, transportation, or disposal requirements to ensure protection of the public health, safety, and welfare and the environment.

(9) "Waste reduction" means practices that decrease the weight, volume, or toxicity of material entering the solid waste management stream.

History: En. Sec. 2, Ch. 222, L. 1991; amd. Sec. 204, Ch. 418, L. 1995; amd. Sec. 1, Ch. 62, L. 2005.

75-10-803. Solid waste reduction goal and targets. (1) It is the goal of the state to reduce, through source reduction, reuse, recycling, and composting, the amount of solid waste that is generated by households, businesses, and governments and that is either disposed of in landfills or burned in an incinerator, as defined in 75-2-103.

(2) Targets for the rate of recycling and composting are:

(a) 17% of the state's solid waste referenced in subsection (1) by 2008;

(b) 19% of the state's solid waste referenced in subsection (1) by 2011; and

(c) 22% of the state's solid waste referenced in subsection (1) by 2015.

History: En. Sec. 3, Ch. 222, L. 1991; amd. Sec. 2, Ch. 62, L. 2005.

75-10-804. Integrated waste management priorities. It is the policy of the state to plan for and implement an integrated approach to solid waste management, which must be based upon the following order of priority:

(1) source reduction;

(2) reuse;

(3) recycling;

(4) composting; and

(5) landfill disposal or incineration.

History: En. Sec. 4, Ch. 222, L. 1991; amd. Sec. 3, Ch. 62, L. 2005.

75-10-805. State government waste reduction and recycling program. (1) In order to progress toward achieving the waste reduction targets identified in 75-10-803, each state agency, the legislature, and the university system shall:

(a) prepare a waste reduction and recycling plan to reduce the solid waste generated by state government. This plan must be submitted to the department and must include, at a minimum, provisions for the composting of yard wastes and the recycling of office and computer paper, cardboard, used motor oil, used oil filters, and other materials produced by the state for which recycling markets exist or may be developed.

(b) establish and implement a waste reduction and recycling program; and

(c) apply computer technology to reduce the generation of waste paper through:

(i) the use of digital access systems;

(ii) the transfer of information in electronic rather than paper form; and

(iii) other applications of computer technology.

(2) The plan must be evaluated every 5 years and updated as necessary.

History: En. Sec. 5, Ch. 222, L. 1991; amd. Sec. 4, Ch. 440, L. 1997; amd. Sec. 4, Ch. 62, L. 2005; amd. Sec. 29, Ch. 365, L. 2023.

75-10-806. State government procurement of recycled supplies and materials. (1) The department of administration shall write purchasing specifications that incorporate requirements for the purchase of materials and supplies made from recycled materials if the use is technologically practical and reasonably cost-effective. These requirements must be incorporated into the purchase of:

(a) paper and paper products;

(b) plastic and plastic products;
(c) glass and glass products;
(d) automobile and truck tires;
(e) motor oil and lubricants; and
(f) other materials and supplies as determined by the department of administration.

(2) It is the goal of the state that 95% of the paper and paper products used by state agencies, universities, and the legislature must be made from recycled material that maximizes postconsumer material content.

(3) The state shall, to the maximum extent possible, purchase for use by state agencies paper and paper products that contain postconsumer material rather than new material.

(4) To the extent practical, guidelines for the recycled material content of paper should be consistent with nationwide standards for recycled paper.

(5) The department and the department of administration shall establish a joint recycling market development task force. Task force membership must include but is not limited to representatives of the recycling industry, wholesalers, state agencies, and citizen and environmental organizations, as well as other interested persons. The task force shall:

(a) assist the department of administration in developing purchasing specifications as required in subsection (1);
(b) develop additional mechanisms for state government to develop markets for recycled materials;
(c) identify procurement barriers that discriminate against the purchase of supplies and products that contain recycled material; and
(d) develop recommendations for an informational program designed to educate state employees on how to reduce waste and recycle in the workplace.

History: En. Sec. 6, Ch. 222, L. 1991; amd. Sec. 271, Ch. 42, L. 1997.

75-10-807. Requirement to prepare and implement state solid waste management and resource recovery plan. (1) As a basis for developing an integrated waste management program and ensuring adequate disposal capacity, the department shall prepare, adopt, and implement a state solid waste management and resource recovery plan in accordance with 75-10-111 and this part.

(2) The plan must be comprehensive and integrated and must include at least the following elements:

(a) a capacity assurance element that identifies existing disposal capacity, estimates waste generation rates, and determines the disposal capacity needed for the future and that assesses the potential effect of interstate disposal on capacity;
(b) an element that incorporates federal regulations 40 CFR, parts 257 and 258;
(c) an element that identifies the role of each of the components of the integrated waste management priorities contained in 75-10-804;
(d) a technology assessment element that assesses the availability and practicality of alternative technologies for solid waste management;
(e) an education and public information element that identifies existing education and information programs and describes how the state will increase the awareness and cooperation of the public in environmentally safe solid waste management;
(f) a special waste and household hazardous waste element that identifies types and quantities of wastes that create special disposal problems and recommends methods for reducing, handling, collecting, transporting, and disposing of those wastes and that identifies existing and future strategies for managing those wastes;
(g) an element that identifies the needs of rural communities and management strategies to address those needs;
(h) an element that identifies mechanisms to ensure proper training of landfill operators; and
(i) a timeline and implementation strategy for each of the plan elements.

(3) The plan must be evaluated every 5 years and updated as necessary.

History: En. Sec. 7, Ch. 222, L. 1991; amd. Sec. 5, Ch. 62, L. 2005; amd. Sec. 4, Ch. 54, L. 2007.

Part 9
Megalandfill Siting Act
(Repealed)

75-10-901. Repealed. Sec. 2, Ch. 366, L. 2009.
History: En. Sec. 1, Ch. 468, L. 1991.

75-10-902. Repealed. Sec. 2, Ch. 366, L. 2009.
History: En. Sec. 2, Ch. 468, L. 1991; amd. Sec. 17, Ch. 361, L. 2003.

75-10-903. Repealed. Sec. 2, Ch. 366, L. 2009.
History: En. Sec. 3, Ch. 468, L. 1991; amd. Sec. 1, Ch. 338, L. 1993; amd. Sec. 205, Ch. 418, L. 1995; amd. Secs. 530, 568, Ch. 546, L. 1995.

75-10-904 and 75-10-905 reserved.

75-10-906. Repealed. Sec. 2, Ch. 366, L. 2009.
History: En. Sec. 4, Ch. 468, L. 1991.

75-10-907. Repealed. Sec. 2, Ch. 366, L. 2009.
History: En. Sec. 5, Ch. 468, L. 1991.

75-10-908. Repealed. Sec. 2, Ch. 366, L. 2009.
History: En. Sec. 6, Ch. 468, L. 1991.

75-10-909. Repealed. Sec. 2, Ch. 366, L. 2009.
History: En. Sec. 7, Ch. 468, L. 1991.

75-10-910. Repealed. Sec. 2, Ch. 366, L. 2009.
History: En. Sec. 8, Ch. 468, L. 1991.

75-10-911 and 75-10-912 reserved.

75-10-913. Repealed. Sec. 2, Ch. 366, L. 2009.
History: En. Sec. 9, Ch. 468, L. 1991; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 206, Ch. 418, L. 1995; amd. Sec. 206, Ch. 483, L. 2001.

75-10-914. Repealed. Sec. 2, Ch. 366, L. 2009.
History: En. Sec. 10, Ch. 468, L. 1991.

75-10-915 reserved.

75-10-916. Repealed. Sec. 2, Ch. 366, L. 2009.
History: En. Sec. 11, Ch. 468, L. 1991.

75-10-917. Repealed. Sec. 2, Ch. 366, L. 2009.
History: En. Sec. 12, Ch. 468, L. 1991.

75-10-918. Repealed. Sec. 2, Ch. 366, L. 2009.
History: En. Sec. 13, Ch. 468, L. 1991; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 207, Ch. 418, L. 1995; amd. Sec. 207, Ch. 483, L. 2001.

75-10-919. Repealed. Sec. 2, Ch. 366, L. 2009.
History: En. Sec. 14, Ch. 468, L. 1991; amd. Sec. 70, Ch. 18, L. 1995.

75-10-920. Repealed. Sec. 2, Ch. 366, L. 2009.
History: En. Sec. 15, Ch. 468, L. 1991; amd. Sec. 5, Ch. 54, L. 2007.

75-10-921. Repealed. Sec. 2, Ch. 366, L. 2009.
History: En. Sec. 16, Ch. 468, L. 1991; amd. Sec. 2, Ch. 338, L. 1993; amd. Sec. 531, Ch. 546, L. 1995.

75-10-922. Repealed. Sec. 2, Ch. 366, L. 2009.
History: En. Sec. 17, Ch. 468, L. 1991; amd. Sec. 6, Ch. 299, L. 2001; amd. Sec. 7, Ch. 337, L. 2005.

75-10-923. Repealed. Sec. 2, Ch. 366, L. 2009.
History: En. Sec. 18, Ch. 468, L. 1991.

75-10-924. Repealed. Sec. 2, Ch. 366, L. 2009.
History: En. Sec. 19, Ch. 468, L. 1991; amd. Sec. 3, Ch. 487, L. 1997.

75-10-925. Repealed. Sec. 2, Ch. 366, L. 2009.
History: En. Sec. 20, Ch. 468, L. 1991.

75-10-926. Repealed. Sec. 2, Ch. 366, L. 2009.
History: En. Sec. 21, Ch. 468, L. 1991.

75-10-927. Repealed. Sec. 2, Ch. 366, L. 2009.
History: En. Sec. 22, Ch. 468, L. 1991.

75-10-928. Repealed. Sec. 2, Ch. 366, L. 2009.
History: En. Sec. 23, Ch. 468, L. 1991.

75-10-929. Repealed. Sec. 2, Ch. 366, L. 2009.
History: En. Sec. 24, Ch. 468, L. 1991.

75-10-930. Repealed. Sec. 2, Ch. 366, L. 2009.
History: En. Sec. 25, Ch. 468, L. 1991.

75-10-931 and 75-10-932 reserved.

75-10-933. Repealed. Sec. 2, Ch. 366, L. 2009.
History: En. Sec. 26, Ch. 468, L. 1991.

75-10-934. Repealed. Sec. 2, Ch. 366, L. 2009.
History: En. Sec. 27, Ch. 468, L. 1991.

75-10-935. Repealed. Sec. 2, Ch. 366, L. 2009.
History: En. Sec. 28, Ch. 468, L. 1991.

75-10-936 and 75-10-937 reserved.

75-10-938. Repealed. Sec. 2, Ch. 366, L. 2009.
History: En. Sec. 29, Ch. 468, L. 1991.

75-10-939. Repealed. Sec. 2, Ch. 366, L. 2009.
History: En. Sec. 30, Ch. 468, L. 1991.

75-10-940. Repealed. Sec. 2, Ch. 366, L. 2009.
History: En. Sec. 31, Ch. 468, L. 1991.

75-10-941. Repealed. Sec. 2, Ch. 366, L. 2009.
History: En. Sec. 32, Ch. 468, L. 1991.

75-10-942. Repealed. Sec. 2, Ch. 366, L. 2009.
History: En. Sec. 33, Ch. 468, L. 1991.

75-10-943. Repealed. Sec. 2, Ch. 366, L. 2009.
History: En. Sec. 34, Ch. 468, L. 1991.

75-10-944. Repealed. Sec. 2, Ch. 366, L. 2009.
History: En. Sec. 35, Ch. 468, L. 1991.

75-10-945. Repealed. Sec. 2, Ch. 366, L. 2009.
History: En. Sec. 36, Ch. 468, L. 1991.

75-10-946 through 75-10-949 reserved.

75-10-950. Repealed. Sec. 2, Ch. 366, L. 2009.
History: En. Sec. 1, Ch. 541, L. 1991; amd. Sec. 3, Ch. 338, L. 1993; amd. Sec. 208, Ch. 418, L. 1995; amd. Secs. 532, 568, Ch. 546, L. 1995.

75-10-951. Repealed. Sec. 2, Ch. 366, L. 2009.
History: En. Sec. 2, Ch. 541, L. 1991.

75-10-952. Repealed. Sec. 2, Ch. 366, L. 2009.
History: En. Sec. 3, Ch. 541, L. 1991.

75-10-953. Repealed. Sec. 2, Ch. 366, L. 2009.
History: En. Sec. 4, Ch. 541, L. 1991.

75-10-954. Repealed. Sec. 2, Ch. 366, L. 2009.
History: En. Sec. 5, Ch. 541, L. 1991; amd. Sec. 55, Ch. 422, L. 1997.

Part 10
Infectious Waste Management Act

Part Cross-References
Report of unprotected exposure to disease, 50-16-702.

75-10-1001. Short title. This part may be cited as the "Infectious Waste Management Act".

History: En. Sec. 1, Ch. 483, L. 1991.

75-10-1002. Purpose. The purpose of this part is to protect the public health, safety, and welfare of the citizens of Montana by developing and implementing infectious waste management policies that are reasonable, cost-effective, aesthetically pleasing, and environmentally acceptable.

History: En. Sec. 2, Ch. 483, L. 1991.

75-10-1003. Definitions. As used in this part, the following definitions apply:

(1) "Disposal" or "dispose" has the meaning provided in 75-10-203.

(2) "Generate" or "generation" means to produce infectious waste.

(3) "Infectious" means capable of producing disease. To be infectious, the following four factors simultaneously must be present:

(a) virulence, which is the ability of microorganisms to cause disease;

(b) dose, which is microorganisms in a quantity sufficient to cause infection;

(c) portal of entry, which is an opening or route of access into a human body; and

(d) host susceptibility, which means the host's natural resistance is incapable of preventing infection.

(4) "Infectious waste" means waste capable of producing infectious disease. Infectious waste includes but is not limited to:

(a) cultures and stocks of infectious agents and associated biologicals;

(b) human pathological waste, including tissues, organs, and body parts removed during surgery or an autopsy;

(c) free-flowing waste human blood and products of blood, including serum, plasma, and other blood components and items soaked or saturated with blood; and

(d) sharps that have been used in patient care, medical research, or industrial laboratories.

(5) "Intermediate point" means a place where infectious waste is not treated or disposed of.

(6) "Person" means an individual, firm, partnership, company, association, corporation, city, town, local government entity, federal agency, or any other governmental or private entity, whether organized for profit or not.

(7) "Sharps" means any discarded health care article that may cause punctures or cuts, including but not limited to:

(a) broken glass that may be contaminated with blood;

(b) needles; and

(c) scalpel blades.

(8) "Steam sterilization" means a treatment method for infectious waste using saturated steam within a pressure vessel (known as a steam sterilizer, autoclave, or retort) at a time, for a period of time, and at a temperature sufficient to kill infectious agents within the waste.

(9) "Storage" or "store" means to hold for a temporary period.

(10) "Transport" or "transportation" means to move infectious waste from the point of generation to any intermediate point or to the point of ultimate treatment or disposal.

(11) "Treat" or "treatment" means to apply a method, technique, or process, including incineration, designed to render infectious waste sterile.

History: En. Sec. 3, Ch. 483, L. 1991; amd. Sec. 209, Ch. 418, L. 1995; amd. Sec. 2, Ch. 97, L. 2007.

75-10-1004. Prohibition. (1) Except as provided in subsection (2), a person may not generate, treat, store, transport, or dispose of infectious waste in a manner not authorized under the provisions of this part or rules adopted under the provisions of this part.

(2) The prohibition in subsection (1) does not apply to the generation of infectious waste by an individual in reasonable association with the individual's household operations.

History: En. Sec. 4, Ch. 483, L. 1991; amd. Sec. 3, Ch. 97, L. 2007.

75-10-1005. Management standards — procedures for storage, transportation, treatment, and disposal. (1) Infectious waste must be separated from ordinary waste at the point of origin and stored until the waste is rendered noninfectious in separate, distinct containers with biohazard warning labels in compliance with the following procedures:

(a) Sharps must be contained for storage, transportation, treatment, and subsequent disposal in leakproof, rigid, puncture-resistant containers that must be taped closed or capped securely to prevent loss of contents.

(b) Infectious waste other than sharps must be contained in moisture-proof disposable containers or bags of a strength sufficient to prevent ripping, tearing, or bursting under normal conditions of use. The bags must be securely tied to prevent leakage or expulsion of solid or liquid wastes during storage, handling, and transportation.

(2) To inhibit the spread of infectious agents, infectious waste must be stored prior to treatment in a secured area that prevents access by unauthorized personnel and must be clearly marked or labeled as infectious.

(3) Handling of infectious waste must be done in a manner to prevent compaction or other mechanical manipulation that might cause the release of infectious agents.

(4) (a) Treatment and disposal of infectious waste must be accomplished through the following methods:

(i) incineration with complete combustion that reduces infectious waste to carbonized or mineralized ash;

(ii) steam sterilization that renders infectious waste noninfectious; or

(iii) sterilization by standard chemical techniques or by any scientifically proven techniques approved by state and federal authorities.

(b) Liquid or semisolid infectious waste may be discharged into a sewer system that provides secondary treatment or into a primary treatment sewage system if waste is first sterilized by chemical treatment. A subsurface disposal system installed and operated in accordance with state or local sanitary regulations is, for the purpose of this subsection (b), a sewer system providing secondary treatment.

(c) Fetal remains or recognizable body parts other than teeth must be disposed of by incineration or interment.

(5) If infectious waste has been rendered noninfectious by one of the methods listed in subsection (4) and is no longer biologically hazardous, it may be mixed with and disposed of with ordinary waste in the following manner:

(a) Steam-sterilized waste must be labeled identifying it as such with heat sensitive tape or bagged in marked autoclavable bags.

(b) Chemically treated waste or waste otherwise treated under subsection (4)(a)(iii) must be appropriately labeled.

(6) Infectious waste may be transported by the generator, a municipal solid waste service, or a regulated commercial hauler to an offsite treatment facility if the waste is confined in a leakproof, noncompacting, fully enclosed vehicle compartment.

(7) (a) Infectious waste that has been treated by one of the methods in subsection (4) may be disposed of in a properly operated landfill licensed under 75-10-221.

(b) Untreated infectious waste may be disposed of at a licensed, properly operated landfill until April 1, 1993, if it is buried in a separate area without compaction and with minimum disturbance.

(8) An employee who handles or manages infectious waste must receive training provided by the employer that is adequate to ensure safe performance of duties.

(9) Generators and transporters of infectious waste shall develop a contingency plan to handle spills and equipment failure.

History: En. Sec. 5, Ch. 483, L. 1991.

75-10-1006. Generation licensing and regulation — rulemaking authority. (1) A person that is required to obtain a license from a board or department of the state to operate a health care facility, as defined in 50-5-101, or to engage in a profession or occupation:

(a) may not generate infectious waste, store infectious waste at a place where infectious waste is generated, or transport infectious waste from the point of generation to an intermediate point without a license; and

(b) shall comply with the rules adopted under this part by the board or department responsible for licensing that person.

(2) A board or department of the state that issues a license to a person that generates infectious waste:

(a) shall adopt rules to implement this part governing the following activities by a licensee:

(i) generation of infectious waste;

(ii) storage of infectious waste at a place where infectious waste is generated;

(iii) transportation of infectious waste from the place of generation to an intermediate point; and

(b) may impose and adjust annual fees commensurate with the costs of regulation.

History: En. Sec. 6, Ch. 483, L. 1991; amd. Sec. 4, Ch. 97, L. 2007.

75-10-1007. Criminal penalty. A person who violates this part or a rule adopted pursuant to this part is guilty of a misdemeanor. Absolute liability, as provided for in 45-2-104, is imposed for a violation of this part or a rule adopted under this part.

History: En. Sec. 5, Ch. 97, L. 2007; amd. Sec. 106, Ch. 2, L. 2009.

Part 11
Notice of Motor Oil Recycling Center

75-10-1101. Waste oil notice. (1) Each retailer and wholesaler offering motor oil for sale shall visibly display at an appropriate location within the retail store or wholesale outlet a sign indicating the location of the nearest waste oil recycling collection center if the center is within 25 miles of the retailer or wholesaler.

(2) The department of environmental quality shall design an oil recycling sign to be used by retailers and wholesalers. The department may establish the specifications for the sign by rule.

History: En. Sec. 1, Ch. 623, L. 1991; amd. Sec. 210, Ch. 418, L. 1995.

Part 12
Septage Disposal — Licensure

Part Cross-References

Penalties, fees, and interest, Title 75, ch. 1, part 10.

75-10-1201. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Department" means the department of environmental quality provided for in 2-15-3501.

(3) "Disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of septage into or onto the land or water.

(4) "Domestic sewage" means waste and wastewater from humans or household operations that are discharged to or otherwise enter a treatment works.

(5) "Industrial wastewater" means wastewater generated in a commercial or industrial process.

(6) "Person" means an individual, firm, partnership, association, corporation, city, town, local government entity, or other government or private entity, whether organized for profit or not.

(7) (a) "Septage" means liquid or solid material removed from a septic tank, cesspool, portable toilet, or similar treatment works that receives only domestic sewage.

(b) Septage does not include material removed from a septic tank, cesspool, or similar treatment works that receives industrial wastewater and does not include grease removed from a grease trap at a restaurant.

(8) "Treatment works" means a publicly owned or privately owned device or system used to treat, including to recycle and to reclaim, either domestic sewage or a combination of domestic sewage and industrial waste of a liquid nature.

History: En. Sec. 1, Ch. 378, L. 1999.

75-10-1202. Department rulemaking authority. Except as provided in subsection (4), the department shall adopt rules governing the licensure of a person engaged in the business of cleaning cesspools, septic tanks, and privies or disposing of septage. The rules must provide:

(1) procedures for issuance, denial, renewal, and revocation of licenses;

(2) requirements that provide for the sanitary disposal of septage, including:

(a) application of septage to agricultural land, forest land, and reclamation sites;

(b) standards governing rates of application pursuant to subsection (2)(a);

(c) land application standards and restrictions, including:

(i) pathogen restrictions and treatment requirements;

(ii) vector attraction reduction requirements;

(iii) frequency of monitoring; and

(iv) recordkeeping requirements; and

(3) surface disposal standards, including:

(a) the vector attraction reduction requirements for septage placed on an active sewage sludge unit;

(b) the frequency of monitoring required when septage is placed on an active sewage sludge unit;

(c) the recordkeeping required when septage is placed on a surface disposal site; and

(d) requirements for the disposal of waste from:

(i) cesspools, septic tanks, portable toilets, and other similar treatment works that receive industrial wastewater or grease removed from grease traps; and

(ii) grease traps.

(4) The department may not adopt rules pertaining to the business operations of persons engaged in the business of cleaning cesspools, septic tanks, and privies or disposing of septage, including the fees charged for cleaning or leasing portable toilets.

History: En. Sec. 2, Ch. 378, L. 1999.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

75-10-1203. Special revenue account. There is an account in the state special revenue fund. Money in the account must be used to fund administration and enforcement of this part. The department shall use $50 of each license fee collected under 75-10-1212 to provide training and education for those licensed under this part.

History: En. Sec. 10, Ch. 378, L. 1999; amd. Sec. 1, Ch. 18, L. 2005.

Cross-References

State treasury fund and account structure, 17-2-102.
Public nuisances, Title 27, ch. 30, part 2.
Private nuisances, Title 27, ch. 30, part 3.

75-10-1204 through 75-10-1209 reserved.

75-10-1210. License required — exception. (1) Except as provided in subsection (2), a person may not engage in the business of cleaning cesspools, septic tanks, or privies or dispose of septage unless licensed by the department.

(2) An owner or lessee of property from which septage is removed may dispose of that septage on that person's property if:

(a) the person pumps the septage with the person's equipment or retains a person licensed pursuant to the provisions of subsection (1) to pump the septage; and

(b) the disposal does not violate disposal restrictions or rules adopted pursuant to 75-10-1202 or create a nuisance or public health hazard.

History: En. Sec. 3, Ch. 378, L. 1999.

75-10-1211. Application for license. An application for a license must be made to the department on forms provided by the department. The application must contain:

(1) the full name and business address of the applicant;

(2) a list of the counties in which business is to be conducted and a list of disposal sites that the applicant intends to use during the permit year;

(3) for each disposal site listed pursuant to subsection (2), a certification by a local health officer or the local health officer's designated representative in the county in which the disposal site is located that the site meets all applicable state and local requirements;

(4) written permission to use each proposed disposal site signed by the owner, manager, or other person authorized to give permission to use the disposal site; and

(5) any additional information required by rule.

History: En. Sec. 4, Ch. 378, L. 1999.

75-10-1212. License term, renewal, and fees. (1) A license expires on December 31 of each calendar year. A license is renewable in accordance with procedures established in rules adopted pursuant to 75-10-1202 and upon receipt of the application provided for in subsection (2) of this section. A license is not transferable. If a person ceases to do business, the license terminates and the license must be returned to the department.

(2) An application for renewal of a license must be made on a form provided by the department. The application must contain:

(a) the full name and address of the licensee;

(b) a list of counties in which business is to be conducted during the renewal term;

(c) a list of disposal sites that the licensee intends to use during the renewal term;

(d) for each disposal site listed pursuant to subsection (2)(c) but not previously listed by the licensee for the year immediately preceding the renewal year:

(i) a certification by the local health officer or the local health officer's representative in the county in which the disposal site is located that the site meets all applicable state and local requirements; and

(ii) written permission to use the site signed by the owner, manager, or other person authorized to give permission to use the site; and

(e) any additional information required by the department by rule.

(3) The fee for a license, including renewal of a license, is $300, payable to the department at the time of application for the license or renewal. A federal agency, city, town, county, or other political subdivision is not required to pay the license fee. A city, town, county, or other political subdivision, including a federal agency if allowed by federal law, shall comply with all other requirements of this part. The department shall annually return $50 of each license fee to the county where the fee was collected. The state portion of the fee must be deposited in the account provided for in 75-10-1203. The county portion of the fee must be used to defer the cost of the county to enforce this part.

(4) In addition to the license fee required under subsection (3), the department shall collect a late fee from any person that has failed to submit a license fee between January 31 and April 1 of a renewal year and that operates a business governed by this part in the renewal year. The late fee is $125 and must be deposited in the account provided for in 75-10-1203. The late fee is the exclusive remedy for the late payment of a renewal fee.

History: En. Sec. 5, Ch. 378, L. 1999; amd. Sec. 2, Ch. 18, L. 2005.

75-10-1213 through 75-10-1219 reserved.

75-10-1220. Injunction. (1) The department may sue to enjoin the operation or maintenance of a septage collection or disposal operation until compliance with this part, the rules of the department, or an order issued pursuant to this part has been demonstrated.

(2) Upon request of the department, the attorney general or the county attorney of the county in which a septage collection or disposal operation is located may petition the district court to enjoin further operation or maintenance of the septage collection or disposal operation.

History: En. Sec. 6, Ch. 378, L. 1999.

Cross-References

Injunctions, Title 27, ch. 19.

75-10-1221. Department revocation or denial of license. The department may deny or revoke a license after giving the applicant written notice and an opportunity for a hearing before the board. The decision to deny or revoke a license may be made only after a finding that a business or disposal site cannot be operated or is not being operated in compliance with

this part or a rule or order issued pursuant to this part. The hearing held before the board on a denial or revocation must be held pursuant to the provisions of the Montana Administrative Procedure Act.

History: En. Sec. 7, Ch. 378, L. 1999.

Cross-References

Contested cases, Title 2, ch. 4, part 6.

75-10-1222. Administrative enforcement. (1) If the department believes that a violation of this part, a rule adopted under this part, or an order issued under this part has occurred, it may serve written notice of the violation, by certified mail, on the alleged violator or the violator's agent. The notice must specify the provision of this part, the rule, or the condition of approval alleged to have been violated and the facts alleged to constitute a violation. The notice must include an order to take necessary corrective action within a reasonable period of time. The time period must be stated in the order. Service is complete on the date of mailing.

(2) If the alleged violator does not request a hearing before the board within 30 days of the date of service, the order is final. Failure to comply with a final order may subject the violator to an action commenced pursuant to 75-10-1221.

(3) If the alleged violator requests a hearing before the board within 30 days of the date of service, the board shall schedule a hearing. After the hearing is held, the board may:

(a) affirm or modify the department's order issued under subsection (1) if the board finds that a violation has occurred; or

(b) rescind the department's order if the board finds that a violation has not occurred.

(4) An order issued by the department or the board may set a date by which the violation must cease and set a time limit for the violator to correct the violation.

(5) (a) An action initiated by the department under this section may include an administrative penalty not to exceed $500 for each day of violation. Administrative penalties collected under this section must be deposited in the account provided for in 75-10-1203.

(b) Penalties assessed under this section must be determined in accordance with the penalty factors in 75-1-1001.

(6) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing under this section.

History: En. Sec. 8, Ch. 378, L. 1999; amd. Sec. 17, Ch. 487, L. 2005.

75-10-1223. Penalties and fines. (1) A person who disposes of septage in violation of 75-10-1210 or of the standards adopted pursuant to 75-10-1202 is guilty of a misdemeanor and upon conviction shall be fined an amount not to exceed $500.

(2) (a) A person who violates this part or a rule or order adopted pursuant to this part is subject to a civil penalty of not more than $500. Each day that violation of this part, a rule of the department, or an order issued pursuant to this part occurs constitutes a separate violation. The department or the county attorney of the county in which the violation occurred may file an action to collect the penalty.

(b) Penalties assessed under this subsection (2) must be determined in accordance with the penalty factors in 75-1-1001. An action to recover penalties must be brought in the district court of the county in which the violation occurred.

(3) Penalties collected by the department under this section must be deposited in the environmental rehabilitation and response account in the state special revenue fund provided for in 75-1-110. Fines and penalties collected by a county must be deposited in the general fund of the county.

History: En. Sec. 9, Ch. 378, L. 1999; amd. Sec. 2, Ch. 338, L. 2001; amd. Sec. 18, Ch. 487, L. 2005; amd. Sec. 39, Ch. 535, L. 2021.

Part 13
Methamphetamine or Fentanyl Contamination — Indoor Property Decontamination Standards

75-10-1301. Finding and purpose. The legislature finds that some properties are being contaminated with hazardous chemical residues created by the manufacture of methamphetamine and fentanyl or the consumption of methamphetamine or fentanyl.

Innocent members of the public may be harmed when they are unknowingly exposed to these residues if the properties are not decontaminated prior to any subsequent rental, sale, or use of the properties. Remediation of properties has been frustrated by the lack of a decontamination standard. The purpose of this part is to protect the public health, safety, and welfare by providing specific cleanup standards and authorizing the department to establish a voluntary program that will provide for a property decontamination process that will meet state standards.

History: En. Sec. 1, Ch. 461, L. 2005; amd. Sec. 1, Ch. 93, L. 2021; amd. Sec. 3, Ch. 367, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 367, L. 2025. Amendment effective October 1, 2025.

75-10-1302. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Certified contractor" means any person or company certified by the department to perform the assessment or remediation of inhabitable property or volunteer property contaminated by methamphetamine or fentanyl residues pursuant to 75-10-1304.

(2) "Department" means the department of environmental quality provided for in 2-15-3501.

(3) (a) "Inhabitable property" means any building or structure used as a clandestine methamphetamine or fentanyl drug lab or that has been contaminated with hazardous chemical residues from consumption of methamphetamine or fentanyl that is intended to be primarily occupied by people, either as a dwelling or a business, including a storage facility or mobile home, or that may be sold, leased, or rented for any length of time.

(b) The term does not mean any water system, sewer system, land, or water outside of a building or structure described in subsection (3)(a).

(4) "Surface material" means any porous or nonporous substance common to the interior of a building or structure, including but not limited to ceilings and walls, window coverings, floors and floor coverings, counters, furniture, heating and cooling duct work, and any other surfaces to which inhabitants of the building or structure may be exposed.

(5) "Volunteer property" means an inhabitable property meeting the following criteria:

(a) the property owner has become aware of contamination with hazardous chemical residues from consumption of methamphetamine or fentanyl;

(b) the property has not been reported by law enforcement pursuant to 75-10-1306(1); and

(c) the property owner has elected to follow processes to meet the decontamination standard in 75-10-1303 to receive certification from the department that the decontamination standard has been met.

History: En. Sec. 2, Ch. 461, L. 2005; amd. Sec. 2, Ch. 93, L. 2021; amd. Sec. 4, Ch. 367, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 367, L. 2025. Amendment effective October 1, 2025.

75-10-1303. Decontamination standards — rulemaking authority — samples. (1) The decontamination standard for methamphetamine inside inhabitable property is less than or equal to 1.5 micrograms of methamphetamine for each 100 square centimeters of surface material unless a different standard is adopted by the department by rule to protect human health. The department:

(a) shall adopt standards by rule for the decontamination of fentanyl inside inhabitable property; and

(b) may adopt standards by rule for precursors to methamphetamine and fentanyl that are consistent with the standards for methamphetamine and fentanyl.

(2) (a) The department may by rule establish the number and locations of surface material samples to be collected based on the circumstances of the contamination and acceptable testing methods.

(b) In the absence of a rule described in subsection (2)(a), at least six samples must be collected from the surface material most likely to be contaminated at each property, including at least three samples from the heating, ventilation, and air conditioning systems at each property if present.

History: En. Sec. 3, Ch. 461, L. 2005; amd. Sec. 3, Ch. 93, L. 2021; amd. Sec. 5, Ch. 367, L. 2025.

Compiler's Comments
2025 Amendment: See 2025 Session Law for amendment made by sec. 5, Ch. 367, L. 2025. Amendment effective October 1, 2025.

75-10-1304. Contractor certification — department authority. (1) The department shall establish by rule standards for the training and certification of contractors and their employees who are to perform the assessment or remediation of inhabitable property contaminated by methamphetamine or fentanyl residues.

(2) The department may train and test or may approve courses to train and test contractors and their employees in the proper methods of assessing, remediating, and testing inhabitable property contaminated by methamphetamine residues or fentanyl residues. If the department conducts the training and testing of contractors and their employees, it may adopt rules to provide for the assessment of reasonable fees to cover the state's costs of providing the training and testing.

(3) The department shall establish by rule procedures for the certification of contractors and their employees, including procedures for the decertification of contractors and their employees for cause. The rules may provide for the assessment of reasonable fees to cover the cost of the contractor certification program.

(4) Any contractor and the contractor's employees certified to perform remediation of inhabitable property in any other state must complete refresher training by the department or a department-approved training provider to qualify for certification in Montana.

(5) The department shall maintain a list of certified contractors and shall make the list available to local health officials, law enforcement officials, and the public.

History: En. Sec. 4, Ch. 461, L. 2005; amd. Sec. 6, Ch. 367, L. 2025.

Compiler's Comments
2025 Amendment: See 2025 Session Law for amendment made by sec. 6, Ch. 367, L. 2025. Amendment effective October 1, 2025.

75-10-1305. Occupant notice by owner of inhabitable property — immunity. (1) An owner of inhabitable property that is known by the owner to have been used as a clandestine methamphetamine or fentanyl drug lab or that has been contaminated from consumption of methamphetamine or fentanyl shall notify in writing any subsequent occupant or purchaser of the inhabitable property of that fact if the inhabitable property has not been remediated to the standards established in 75-10-1303 by a certified contractor.

(2) An owner or an owner's agent referred to in subsection (1) may provide notice to a subsequent occupant or purchaser that the owner or the owner's agent has submitted:

(a) documentation to the department by a certified contractor that the inhabitable property has been remediated to the standards established in 75-10-1303; or

(b) documentation by a certified contractor that the property meets the decontamination standards without decontamination.

(3) Notice as required or authorized in this section must occur before agreement to a lease or sale of the inhabitable property.

(4) If the department has confirmed that the decontamination standard provided for in 75-10-1303 has been met and if notice has been given as provided in subsections (2) and (3), the owner and the owner's agent are not liable in any action brought by a person who has been given notice that is based on the presence of methamphetamine in an inhabitable property.

History: En. Sec. 5, Ch. 461, L. 2005; amd. Sec. 4, Ch. 93, L. 2021; amd. Sec. 7, Ch. 367, L. 2025.

Compiler's Comments
2025 Amendment: See 2025 Session Law for amendment made by sec. 7, Ch. 367, L. 2025. Amendment effective October 1, 2025.

75-10-1306. Reporting requirements. (1) Whenever a state or local law enforcement agency becomes aware that an inhabitable property has been contaminated by its use as a clandestine methamphetamine or fentanyl drug lab, the agency shall report the contamination to the department and to the local health officer.

(2) The department shall maintain a list of inhabitable property that has been reported as contaminated, and the list must be made available to the public through a website except as provided in subsection (3).

(3) Upon confirmation by the department that an inhabitable property has been properly remediated to the standards established in 75-10-1303 or that the inhabitable property meets

the decontamination standards without decontamination, the department shall remove the inhabitable property from the list required in subsection (2). The department shall provide written notification to the local health officer and the property owner of record when the documentation shows that the inhabitable property has been properly assessed or remediated.

(4) The department may adopt rules establishing reasonable requirements for the sufficiency of documentation to be provided by a certified contractor.

(5) Notwithstanding any other provision of law, once an inhabitable property has been removed from the list required in subsection (2), a property owner, landlord, or real estate agent is not required to report or otherwise disclose the past contamination.

History: En. Sec. 6, Ch. 461, L. 2005; amd. Sec. 8, Ch. 367, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 8, Ch. 367, L. 2025. Amendment effective October 1, 2025.

75-10-1307. Remediation certification required — investigation of complaint — penalties. (1) A person may not represent to the public that the person is certified to assess or remediate inhabitable property or volunteer property contaminated by methamphetamine or fentanyl residues unless the person is certified by the department under this part.

(2) The department may investigate a complaint or other information received concerning practice by an uncertified person of activities authorized by this part.

(3) For a person guilty of violating subsection (1), the department may:

(a) for a first offense:

(i) revoke the person's license or certification;

(ii) issue a fine of not more than $1,000; and

(iii) require completion of not less than 16 hours of certification training; and

(b) for a second offense:

(i) revoke the person's license or certification;

(ii) issue a fine of not more than $2,000; and

(iii) require completion of not less than 24 hours of certification training.

History: En. Sec. 1, Ch. 367, L. 2025.

Compiler's Comments

Effective Date: This section is effective October 1, 2025.

75-10-1308. Decontamination of volunteer property — verification — no public list. (1) The department shall determine if and verify when a volunteer property has met all decontamination requirements pursuant to 75-10-1303.

(2) The department may not list any volunteer properties on a publicly accessible website or other locations.

History: En. Sec. 2, Ch. 367, L. 2025.

Compiler's Comments

Effective Date: This section is effective October 1, 2025.

Part 14
Mine and Smelter Waste Remediation

75-10-1401. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of environmental quality provided for in 2-15-3501.

(2) "Mine waste" means soil, rock, and other earthen materials excavated from a mine and slimes, tailings, dusts, sludges, or other waste products from the crushing, cleaning, milling, or beneficiation of ores or other mineral-bearing materials, including material that may have migrated from its original place of deposition by erosion or human transit, and that contain hazardous or deleterious substances.

(3) "Smelter waste" means cinders, clinker, slag, and other waste products from the reduction of ores by any means, including material that may have migrated from its original place of deposition by erosion, and that contain hazardous or deleterious substances.

History: En. Sec. 1, Ch. 200, L. 2009.

75-10-1402. Remediation schedule. Except as provided in 75-10-1411, a person who undertakes a remedial action for the remediation of mine or smelter waste on property owned by someone other than the owner of the waste shall complete the remedial action in accordance with a schedule negotiated between the person completing the remedial action and the property owner and approved by the department.

History: En. Sec. 2, Ch. 200, L. 2009.

75-10-1403. Remediation location. (1) Except as provided in 75-10-1411 and subsection (2) of this section, as part of a remedial action on property owned by another, mine and smelter waste may not be placed or remediated in place at a location within 200 feet of any mine excavation or opening.

(2) (a) The requirements of subsection (1) may be waived when, after review of an application by a person undertaking a remedial action, the department finds that the remedial action plan complies with Title 75, chapters 2, 5, and 10, and applicable rules.

(b) The person conducting the remedial action shall reimburse the department for costs incurred by the department under this section.

(c) Reimbursements must be deposited in the environmental rehabilitation and response account provided for in 75-1-110.

(3) The person conducting the remedial action must have the landowner's consent before taking action under this section.

(4) This section does not apply to facilities containing mine or smelter waste that are permitted under Title 82, chapter 4, or that were constructed prior to January 1, 2007.

History: En. Sec. 3, Ch. 200, L. 2009.

75-10-1404. Minimum reclamation standards. (1) Except as provided in 75-10-1411, mine and smelter waste repositories constructed by persons undertaking a remedial action on property owned by another must be capped with a minimum of 24 inches of cover material, including a minimum of 6 inches of topsoil, and revegetated as provided in subsection (3).

(2) Except as agreed to by the person undertaking the remedial action and the property owner or as provided in 75-10-1411, locations where mine or smelter waste has been removed by a person undertaking a remedial action on property owned by someone other than the waste owner must be capped by a minimum of 6 inches of topsoil and revegetated as provided in subsection (3).

(3) Except as provided in 75-10-1411:

(a) mine and smelter waste repositories or lands where mine or smelter waste has been removed must be revegetated using plant species native to the area; and

(b) revegetated areas must achieve a vegetative cover equal to 85% of the vegetation cover of adjacent lands that were not previously disturbed within 3 years of the initial seeding.

History: En. Sec. 4, Ch. 200, L. 2009.

75-10-1405. Remediation plan. (1) A person undertaking a remediation action for mine or smelter waste on property owned by someone other than the waste owner shall prepare and submit to the property owner a detailed, written plan describing the waste to be remediated and remedial actions to take place on the property.

(2) The property owner has a minimum of 30 days to review the plan. If the remediation is completed pursuant to 75-10-712 or 75-10-746, the review is not required.

History: En. Sec. 5, Ch. 200, L. 2009.

75-10-1406 through 75-10-1409 reserved.

75-10-1410. Civil penalty. (1) A district court may assess a civil penalty upon a person who violates 75-10-1401 through 75-10-1405 of not more than $1,000 per day.

(2) An action under this section is not a bar to enforcement by injunction or other appropriate civil remedy.

(3) The penalty provided for in subsection (1) is recoverable in an action brought by the property owner and is payable to the property owner. The action must be filed in the district court of the county where the violation occurred.

History: En. Sec. 6, Ch. 200, L. 2009.

75-10-1411. Mine and smelter waste remediation — compliance with hazardous waste cleanup orders. This part does not apply to reclamation of an abandoned mine site pursuant to 82-4-371 or to the extent that the actions irreconcilably conflict with an order or plan approval issued by the department pursuant to Title 75, chapter 10, part 7, a corrective action order or permit issued pursuant to Title 75, chapter 10, part 4, or a permit issued for reclamation of a mine site pursuant to Title 82, chapter 4, part 3.

History: En. Sec. 7, Ch. 200, L. 2009.

Part 15
Mercury-Added Thermostat Collection (Repealed)

75-10-1501. Repealed. Sec. 1, Ch. 417, L. 2025.
History: En. Sec. 1, Ch. 296, L. 2009.

75-10-1502. Repealed. Sec. 1, Ch. 417, L. 2025.
History: En. Sec. 2, Ch. 296, L. 2009.

75-10-1503. Repealed. Sec. 1, Ch. 417, L. 2025.
History: En. Sec. 3, Ch. 296, L. 2009.

75-10-1504. Repealed. Sec. 1, Ch. 417, L. 2025.
History: En. Sec. 4, Ch. 296, L. 2009.

75-10-1505. Repealed. Sec. 1, Ch. 417, L. 2025.
History: En. Sec. 5, Ch. 296, L. 2009.

75-10-1506. Repealed. Sec. 1, Ch. 417, L. 2025.
History: En. Sec. 6, Ch. 296, L. 2009.

75-10-1507. Repealed. Sec. 1, Ch. 417, L. 2025.
History: En. Sec. 7, Ch. 296, L. 2009.

75-10-1508. Repealed. Sec. 1, Ch. 417, L. 2025.
History: En. Sec. 8, Ch. 296, L. 2009.

75-10-1509. Repealed. Sec. 1, Ch. 417, L. 2025.
History: En. Sec. 9, Ch. 296, L. 2009.

Part 16
Libby Asbestos Cleanup Operation

75-10-1601. Libby asbestos superfund oversight committee — duties. (1) There is a Libby asbestos superfund oversight committee. The oversight committee is attached to the department of environmental quality for administrative purposes only, as prescribed in 2-15-121.

(2) The oversight committee consists of:

(a) the director of the department of environmental quality or the director's designated representative;

(b) a Lincoln County commissioner designated by the commission;

(c) a citizen of Lincoln County nominated by the Lincoln County commission and selected by the governor;

(d) one member of the house of representatives whose district includes at least a portion of Lincoln County appointed by the speaker of the house; and

(e) one member of the senate whose district includes at least a portion of Lincoln County appointed by the senate president.

(3) The oversight committee shall select a presiding officer.

(4) The oversight committee shall meet at least quarterly to fulfill the requirements of this section.

(5) Duties of the oversight committee include:

(a) monitoring activities related to the Libby asbestos superfund site;

(b) assisting in the implementation of final cleanup and long-term operation and maintenance plans for the Libby asbestos superfund site;

(c) reviewing documents and providing comments and recommendations to the department of environmental quality and to local governments and appropriate federal agencies regarding the Libby asbestos superfund site;

(d) assisting in the preparation and dissemination of reports and other information as necessary;

(e) providing recommendations to the department of environmental quality regarding the administration of:

(i) the Libby asbestos cleanup trust fund provided for in 75-10-1603; and

(ii) the Libby asbestos cleanup operation and maintenance account provided for in 75-10-1604;

(f) initiating and striving to maintain negotiations with the department of environmental quality, the environmental protection agency, and any other entity with a goal of reducing the state and federal roles in the long-term operation and maintenance work at the Libby asbestos superfund site while increasing the role of Lincoln County in expending funds and managing and implementing operation and maintenance activities; and

(g) submitting a report to the environmental quality council annually in accordance with 5-11-210.

(6) Unless otherwise provided by law, each member is entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while performing oversight committee duties.

History: En. Sec. 1, Ch. 317, L. 2017; amd. Sec. 1, Ch. 76, L. 2019; amd. Sec. 103, Ch. 261, L. 2021.

75-10-1602. Repealed. Sec. 3, Ch. 76, L. 2019.

History: En. Sec. 2, Ch. 317, L. 2017.

75-10-1603. Libby asbestos cleanup trust fund. (1) There is established a fund of the permanent fund type to pay exclusively for the cost to the state of cleanup and long-term operation and maintenance at the Libby asbestos superfund site.

(2) The fund is financed with:

(a) 20% of the funds allocated for the cleanup and long-term operation and maintenance costs pursuant to 75-10-704;

(b) any funds remaining at the end of each fiscal year in the Libby asbestos cleanup operation and maintenance account provided for in 75-10-1604; and

(c) other sources of funding that the legislature or congress may from time to time provide.

(3) The fund must be invested by the board of investments pursuant to Title 17, chapter 6, part 2, and the earnings from the investment must be credited to the principal of the fund until the year 2028.

(4) The annual earnings on the fund for the year 2029 and for each succeeding year may be appropriated for the purposes of subsection (1).

(5) The principal of the fund must remain inviolate unless appropriated by a vote of two-thirds of the members of each house of the legislature. An appropriation of the principal may be made only for payment of the costs of cleanup and long-term operation and maintenance costs.

History: En. Sec. 3, Ch. 317, L. 2017.

75-10-1604. Libby asbestos cleanup operation and maintenance account. (1) There is a Libby asbestos cleanup operation and maintenance account in the state special revenue fund established in 17-2-102. Subject to appropriation by the legislature, money deposited in the account must be used for:

(a) cleanup and long-term operation and maintenance costs at the Libby asbestos superfund site; and

(b) administrative costs for the Libby asbestos superfund oversight committee, not to exceed 25% of the annual appropriation.

(2) The following funds must be deposited in the account:

(a) 80% of the funds allocated for the cleanup and long-term operation and maintenance costs pursuant to 75-10-704;

(b) money received by the department of environmental quality in the form of grants, gifts, transfers, bequests, and donations, including donations limited in their purpose by the grantor, or appropriations from any source intended to be used for the purposes of this account; and

(c) any interest or income earned on the account.

(3) Any unspent or unencumbered money in the account at the end of a fiscal year must be transferred to the Libby asbestos cleanup trust fund.

History: En. Sec. 4, Ch. 317, L. 2017; amd. Sec. 2, Ch. 76, L. 2019.

CHAPTER 11
UNDERGROUND STORAGE TANKS

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Part 2 — Montana Underground Storage Tank Installer and Inspector Licensing and Permitting Act

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Part 4 — Montana Petroleum Brownfields Revitalization Act (Repealed)

Part 5 — Montana Underground Storage Tank Act

75-11-501. Short title.
75-11-502. Intent, findings, and purpose.
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75-11-506 and 75-11-507 reserved.
75-11-508. Corrective action — petroleum mixing zones.
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Part 7 — Montana Brownfields Revitalization Act

75-11-701. Short title.
75-11-702. Findings and intent — purposes.
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Chapter Cross-References
Nuisances, Title 27, ch. 30.
Penalties, fees, and interest, Title 75, ch. 1, part 10.

Part 1 reserved

Part 2
Montana Underground Storage Tank Installer and Inspector Licensing and Permitting Act

Part Cross-References
Hazardous waste management, Title 75, ch. 10, part 4.

75-11-201. Short title. This part may be cited as the "Montana Underground Storage Tank Installer and Inspector Licensing and Permitting Act".

History: En. Sec. 1, Ch. 594, L. 1989; amd. Sec. 1, Ch. 506, L. 1999.

75-11-202. Intent, findings, and purpose. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Underground Storage Tank Installer and Inspector Licensing and Permitting Act. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) Leaking underground storage tank systems have been identified as a significant source of underground contamination and as a potential hazard for fire and explosion. Government and industry studies show that a major cause of leaking underground storage tanks is improper installation or closure. Proper installation, closure, and inspection require specialized knowledge, training, and experience.

(3) To protect the health of Montana citizens and the quality of state waters and other natural resources, it is the intent of the legislature to require permits for the installation or closure of underground storage tank systems; to limit the conduct of these activities to persons with demonstrated competence, training, and experience; and to provide for permitting, licensing, and inspection activities.

History: En. Sec. 2, Ch. 594, L. 1989; amd. Sec. 1, Ch. 200, L. 1993; amd. Sec. 2, Ch. 506, L. 1999; amd. Sec. 18, Ch. 361, L. 2003.

75-11-203. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Closure" or "to close" means the process of properly removing or filling in place an underground storage tank that is no longer in service.

(3) "Department" means the department of environmental quality provided for in 2-15-3501.

(4) "Inspection" means activities to inspect all or part of an underground storage tank system, including records relating to installation, operation, maintenance, and closure to determine compliance with applicable laws and rules relating to operation and maintenance.

(5) "Inspector" means an individual who performs inspections of underground storage tank systems.

(6) (a) "Installation" or "to install" means the placement of an underground storage tank system, including excavation, tank placement, backfilling, and piping of underground portions of the underground storage tank system that store or convey regulated substances. Installation includes repair or modification of an underground storage tank system through such means as tank relining or the repair or replacement of valves, fillpipes, piping, vents, or in-tank liquid-level monitoring systems. Installation also means installation, repair, or modification of a leak detection device that is external to and not attached to the underground storage tank system and the installation, repair, or modification of a cathodic protection system.

(b) The terms do not include the process of conducting a precision (tightness) test to establish the integrity of the underground storage tank system.

(7) "Installer" means an individual who installs or closes underground storage tank systems.

(8) "License" means a license issued by the department under 75-11-204 or 75-11-210 to conduct the inspection, installation, or closure of underground storage tank systems.

(9) "Licensed inspector" means an individual who holds a valid underground storage tank system inspector license.

(10) "Licensed installer" means an individual who holds a valid underground storage tank system installer license.

(11) "Operator" means a person in control of or having responsibility for the operation, maintenance, or management of an underground storage tank system.

(12) "Owner" means a person who owns an underground storage tank system used for the storage, use, or dispensing of regulated substances.

(13) "Person" means an individual, firm, trust, estate, partnership, company, association, corporation (whether organized for profit or not), city, town, local governmental entity, or any other governmental or private entity.

(14) "Regulated substance" means a regulated substance as defined in 75-11-503.

(15) "Underground storage tank" or "underground storage tank system" means an underground storage tank, as defined in 75-11-503, and, for purposes of this part, includes ancillary equipment designed to prevent, detect, or contain a release from an underground storage tank system.

History: En. Sec. 3, Ch. 594, L. 1989; amd. Sec. 2, Ch. 200, L. 1993; amd. Sec. 211, Ch. 418, L. 1995; amd. Secs. 533, 568, Ch. 546, L. 1995; amd. Sec. 32, Ch. 112, L. 1997; amd. Sec. 3, Ch. 506, L. 1999.

75-11-204. Rulemaking authority. (1) The department may adopt rules governing the installation and closure of underground storage tank systems and rules providing for the inspection of underground storage tank systems. Rules may include but are not limited to the following:

(a) the requirements for issuance, denial, renewal, modification, suspension, and revocation of permits for the installation and closure of underground storage tank systems;

(b) the requirements for issuance, denial, renewal, modification, suspension, and revocation of licenses for underground storage tank system installers and inspectors. The license for inspectors must be separate from the license for installers.

(c) the requirements for examination and training of underground storage tank system installers and inspectors;

(d) the requirements for qualifications of inspectors, use of inspectors, and methods for conducting an inspection. The department shall adopt separate qualifications for installers and inspectors.

(e) a schedule of fees for obtaining licenses and license renewals by underground storage tank system installers and inspectors;

(f) a schedule of fees for the review of applications for underground storage tank system permits;

(g) a schedule of fees for inspection of installations or closures; and

(h) the mechanism for remittance of inspection or permitting fees to local governments.

(2) Licensed inspectors employed by a local government unit designated pursuant to 75-11-213 or 75-11-505 and associated rules are exempt from the licensing fees described in this section.

History: En. Sec. 4, Ch. 594, L. 1989; amd. Sec. 3, Ch. 200, L. 1993; amd. Sec. 4, Ch. 506, L. 1999.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

75-11-205 through 75-11-208 reserved.

75-11-209. Permits — requirement for licensed installer. (1) A person may not install or close, or cause to be installed or closed, an underground storage tank system without a permit issued by the department as provided in 75-11-212.

(2) In addition to obtaining a permit, an owner or operator shall obtain the services of a licensed installer for the installation or closure of an underground storage tank system unless the installation or closure is inspected by a department inspector or a designated local inspector as provided in 75-11-213.

History: En. Sec. 5, Ch. 594, L. 1989; amd. Sec. 4, Ch. 200, L. 1993; amd. Sec. 2, Ch. 641, L. 1993; amd. Sec. 2, Ch. 568, L. 1995.

75-11-210. Licensing — interim licenses — regular licenses. (1) An installer may not install or close an underground storage tank system unless that person has a valid license issued by the department.

(2) The department shall grant an installer a regular license if the installer demonstrates competency and experience in the installation and closure of underground storage tank systems, passes a written examination conducted by the department, and pays the license fee established by department rule.

(3) The department shall conduct written examinations for the purpose of qualifying individuals to receive an underground storage tank system installer license. The department shall determine the times and locations of the examinations and shall provide public notice of the examinations.

(4) An underground storage tank system installer license is valid for a period not to exceed 3 years and is subject to periodic renewal as prescribed by department rule.

(5) As a condition of renewal, the department may require that an installer demonstrate continuing competency in the installation and closure of tank systems.

(6) An installer need not be a Montana resident to qualify for a license.

History: En. Sec. 6, Ch. 594, L. 1989; amd. Sec. 5, Ch. 200, L. 1993.

75-11-211. Denial, modification, suspension, or revocation of installer or inspector license — grounds. (1) The department may deny, modify, condition, suspend, or revoke a license if the installer or inspector:

(a) fails to achieve a passing grade on a written examination;

(b) fails to pay the license fee imposed under this part;

(c) commits fraud or deceit with respect to the license or permit application or an inspection report submitted to the department;

(d) has had suspended or revoked:

(i) a license issued under this part; or

(ii) a similar license in another state or territory; or

(e) violates any state or federal law, rule, permit, or order relating to the installation or closure of an underground storage tank system.

(2) If the department modifies, conditions, suspends, or revokes a license, it shall inform the applicant or license holder in writing of the reason for the action. The applicant or license holder may request a hearing before the board. If the board grants a hearing, the hearing must be held in accordance with the provisions of the Montana Administrative Procedure Act.

History: En. Sec. 7, Ch. 594, L. 1989; amd. Sec. 6, Ch. 200, L. 1993; amd. Sec. 5, Ch. 506, L. 1999.

Cross-References

Contested cases, Title 2, ch. 4, part 6.

75-11-212. Permits — application procedure — issuance. (1) Before the installation or closure of an underground storage tank system, the owner or operator or the owner's or operator's designated licensed underground storage tank installer or remover shall file a permit application with the department on forms provided by the department. The time between the filing of a permit application with the department and the installation or closure may be provided by department rule. The department may provide by rule for emergency permits to apply to emergency conditions pertaining to the installation or closure of underground storage tanks.

(2) The permit application must, at a minimum, require the owner or operator to provide information concerning:

(a) the date of the underground storage tank system installation or closure;

(b) the location of the underground storage tank system installation or closure;

(c) the type of construction of the underground storage tank system;

(d) the contents of the underground storage tank system being closed or the anticipated contents of the tank being installed; and

(e) the name of the licensed installer who will be installing or closing the underground storage tank system or, if the owner or operator is not going to have the underground storage tank system installed or closed by a licensed installer, the estimated date for inspection by the department.

(3) After receipt of a completed application that meets the requirements of this section and any rules adopted under 75-11-204, the department shall issue the permit.

History: En. Sec. 8, Ch. 594, L. 1989; amd. Sec. 7, Ch. 200, L. 1993; amd. Sec. 3, Ch. 641, L. 1993; amd. Sec. 6, Ch. 506, L. 1999.

75-11-213. Inspection of installations and closures — fee. (1) After being issued a permit, an owner or operator may obtain an inspection by the department in lieu of obtaining the services of a licensed installer. The owner or operator shall provide timely notice to the department of the date and location of the underground storage tank system installation or closure and shall establish with the department the time when an inspection may be conducted.

(2) An owner or operator may conduct an installation or closure under this section only if an inspector is present.

(3) An inspection fee must be paid by the owner or operator to the department to cover the costs associated with an inspection. The inspection is not considered complete until the owner or operator pays the fee.

(4) Department officials or local government officers, such as local health officers, sanitarians, local fire chiefs, or other persons designated or hired by the department, shall conduct inspections on behalf of the department.

(5) The department shall pay the person conducting an inspection on the department's behalf, as provided in subsection (4), from the underground storage tank system license and permit account established in 75-11-227 up to 80% of any fee collected by the department for the inspection. When an inspection is conducted by an officer of a county or city, the payment must be made by the department to the appropriate county or city treasurer. A county or city

shall use payments received under this section only for costs incurred in conducting inspections under this section.

(6) A copy of an installation inspection report must be kept on file by the owner or operator for as long as the department may require by rule. A copy of a closure inspection report must be kept by the owner or operator for 3 years after the date of closure.

(7) The department may enter and inspect the premises or any appurtenant property of an owner or operator at any time to ensure compliance with laws or rules pertaining to underground storage tank systems.

History: En. Sec. 9, Ch. 594, L. 1989; amd. Sec. 8, Ch. 200, L. 1993.

75-11-214. Licensing of inspectors — interim licenses — regular licenses. (1) The department shall grant an inspector license if the inspector demonstrates competency and experience in the inspection of underground storage tank systems, passes a written examination conducted by the department or by an agency or person authorized by the department to give the examination, and pays the license fee.

(2) The department or an agency or person authorized by the department to give the examination shall conduct written examinations for the purpose of qualifying individuals to receive an underground storage tank system inspector license. The department shall provide public notice of the date, time, and location of the examination.

(3) An underground storage tank system inspector license is valid for a period not to exceed 3 years and is subject to periodic renewal as prescribed by department rule.

(4) As a condition of renewal, the department may require that an inspector demonstrate continuing competency in the regulatory requirements applicable to operation and maintenance of underground storage tank systems.

(5) An inspector need not be a Montana resident to qualify for a license.

History: En. Sec. 9, Ch. 506, L. 1999.

Cross-References

Residence — rules for determining, 1-1-215.

Adoption and publication of rules, Title 2, ch. 4, part 3.

75-11-215 reserved.

75-11-216. Terminated. Sec. 7, Ch. 568, L. 1995.

History: En. Sec. 3, Ch. 568, L. 1995.

75-11-217. Repealed. Sec. 4, Ch. 568, L. 1995.

History: En. Sec. 10, Ch. 594, L. 1989; amd. Sec. 9, Ch. 200, L. 1993.

75-11-218. Administrative enforcement. (1) When the department believes that a person has violated this part, a rule adopted under this part, or a permit provision, it may serve written notice of the violation on the person or the person's agent. The notice must specify the alleged violation and the facts that constitute the alleged violation. The notice may include an order to provide information pertaining to the installation, closure, or inspection, an order to take necessary corrective action within a reasonable time as stated in the order, or an order assessing an administrative penalty pursuant to 75-11-223. A notice and order must be signed by the director of the department or the director's designee and must be served personally or by certified mail upon the person or the person's agent. The order becomes final unless, within 30 days after the notice is served, the person requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

(2) If, pursuant to a hearing held under subsection (1), the board finds that a violation has occurred, it shall either affirm or modify the department's order. An order issued by the department or the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after a hearing, the board finds that a violation has not occurred, it shall rescind the department's order.

(3) In addition to or instead of issuing an order pursuant to subsection (1), the department may either:

(a) require the alleged violator to appear before the board for a hearing at a time and place specified in the notice and answer the charges described in the notice of violation; or

(b) initiate action under 75-11-219, 75-11-223, or 75-11-224.

(4) This section does not prevent the board or department from attempting to obtain voluntary compliance through issuance of a warning, a conference, or any other appropriate administrative or judicial means.

(5) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section.

History: En. Sec. 11, Ch. 594, L. 1989; amd. Sec. 10, Ch. 200, L. 1993; amd. Sec. 7, Ch. 506, L. 1999; amd. Sec. 5, Ch. 443, L. 2005.

75-11-219. Injunctions. The department may institute and maintain in the name of the state actions for injunctive relief as provided in Title 27, chapter 19, to:

(1) immediately restrain any person from engaging in unauthorized activity that is endangering public health or causing damage to the environment;

(2) enjoin a violation of this part, a rule adopted under this part, or an order of the department or the board; or

(3) require compliance with this part, a rule adopted under this part, or an order of the department or the board.

History: En. Sec. 12, Ch. 594, L. 1989.

75-11-220. Imminent hazard. Upon receipt of evidence that the installation or closure of an underground storage tank system may present an imminent and substantial danger to public health or the environment, the department may commence administrative or judicial proceedings to immediately abate the danger or to restrain, order, or enjoin any person from causing the danger. The department may take other judicial or administrative action as may be necessary.

History: En. Sec. 13, Ch. 594, L. 1989; amd. Sec. 11, Ch. 200, L. 1993.

Cross-References

Injunctions, Title 27, ch. 19.

75-11-221 and 75-11-222 reserved.

75-11-223. Civil and administrative penalties. (1) (a) A person who violates a provision of this part, a rule adopted under this part, or an order of the department or the board is subject to an administrative penalty not to exceed $500 for each violation or a civil penalty not to exceed $10,000 for each violation. If an installer or an inspector who is an employee is in violation, the employer of that installer or that inspector is the entity that is subject to the provisions of this section unless the violation is the result of a grossly negligent or willful act. Each day of violation of this part, a rule adopted under this part, or an order constitutes a separate violation.

(b) Penalties assessed under this subsection (1) must be determined in accordance with the penalty factors in 75-1-1001.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. The enforcement or collection action must be brought in the district court of the county in which the violation occurred. Upon request of the department, the attorney general or the county attorney of the county where the violation occurred shall petition the district court to impose, assess, and recover the civil penalty.

(3) Action under this section does not bar:

(a) enforcement of this part, rules adopted under this part, orders of the department or the board, or terms of a license or permit by injunction or other appropriate remedy; or

(b) action under 75-11-224.

History: En. Sec. 14, Ch. 594, L. 1989; amd. Sec. 1, Ch. 433, L. 1991; amd. Sec. 8, Ch. 506, L. 1999; amd. Secs. 6, 11, Ch. 443, L. 2005; amd. Sec. 19, Ch. 487, L. 2005; amd. Sec. 40, Ch. 535, L. 2021.

Cross-References

Injunctions, Title 27, ch. 19.

75-11-224. Criminal penalties. (1) Any owner or operator who knowingly installs or closes an underground storage tank system without a permit and either an inspection or the use of the services of a licensed installer as required in 75-11-209; any installer who knowingly installs or closes an underground storage tank system without being licensed; or any person who knowingly makes any false statements or representations in any application, permit, report, licensing form, or other document filed or maintained as required by this part or required by rules adopted under this part is subject to a fine not to exceed $10,000 for each violation or

imprisonment not to exceed 6 months, or both. Each day of violation constitutes a separate violation.

(2) A person convicted of a second or subsequent criminal violation is subject to a fine not to exceed $20,000 for each violation or imprisonment not to exceed 1 year, or both. Each day of violation constitutes a separate violation.

(3) Action under this section does not bar enforcement of this part, rules adopted under this part, orders of the department or the board, or terms of a license or permit by injunction or other appropriate remedy.

History: En. Sec. 15, Ch. 594, L. 1989; amd. Sec. 12, Ch. 200, L. 1993.

Cross-References

Injunctions, Title 27, ch. 19.

75-11-225. Compliance with other laws — limitation on local ordinances. (1) Nothing in this part limits or alters the responsibility of an owner, operator, or installer to comply with all other state laws or rules.

(2) Ordinances adopted by local government units requiring installation or closure permits or licensed installers, or both, may be no less stringent than the requirements of this part.

History: En. Sec. 16, Ch. 594, L. 1989.

75-11-226. Application of other law. (1) The provisions of this part and rules adopted under this part govern if they conflict with other provisions of Montana law or any action taken by the department under the other provisions of law.

(2) The remedies provided for in this part are cumulative with other remedies provided by law.

History: En. Sec. 17, Ch. 594, L. 1989.

75-11-227. Underground storage tank license and permit account. (1) There is an underground storage tank license and permit account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the account:

(a) revenues from permit, license, and inspection fees collected under this part; and

(b) revenues from penalties or damages collected under this part.

(3) Appropriations may be made from the underground storage tank license and permit account only for the administration of the underground storage tank program.

History: En. Sec. 18, Ch. 594, L. 1989.

75-11-228 through 75-11-230 reserved.

75-11-231. Terminated. Sec. 6, Ch. 641, L. 1993.

History: En. Sec. 1, Ch. 641, L. 1993.

75-11-232. Closure of tanks under section 1, Chapter 641, Laws of 1993. (1) The department shall indicate in all relevant files that an underground storage tank removed from the ground or closed in-place in accordance with section 1, Chapter 641, Laws of 1993, is determined fully and finally closed by the department.

(2) Underground storage tank systems determined closed under this section are exempt from environmental review by the department unless the department receives substantial evidence of a release that poses a current or potential threat to human health or the environment.

History: En. Sec. 1, Ch. 505, L. 1995.

Part 3
Petroleum Storage Tank Cleanup

Part Cross-References

Petroleum Tank Release Compensation Board, 2-15-2108.

Hazardous waste management, Title 75, ch. 10, part 4.

75-11-301. Intent, findings, and purposes. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted this part. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) The legislature finds that the use of petroleum products stored in tanks contributes significantly to the economic well-being and quality of life of Montana citizens.

(3) The legislature finds that leaks, spills, and other releases of petroleum products from storage tanks endanger public health and safety, ground water quality, and other state resources.

(4) The legislature finds that current administrative and financial resources of the public and private sectors are inadequate to address problems caused by releases from petroleum storage tanks and need to be supplemented by a major program of release detection and corrective action.

(5) The legislature finds that proper funding for the program is through a petroleum storage tank cleanup fee paid by persons who use and receive the benefits of petroleum products. The legislature further finds that this general use fee, provided for in 75-11-314, is intended solely to support a program to pay for corrective action and damages caused by releases from petroleum storage tanks. The general use fee is collected from distributors for administrative convenience and is not intended as a method for collecting highway revenue pursuant to the provisions of Article VIII, section 6, of the Montana constitution or 15-70-126.

(6) The purposes of this part are to:

(a) protect public health and safety and the environment by providing prompt detection and cleanup of petroleum tank releases;

(b) provide adequate financial resources and effective procedures through which tank owners and operators may undertake and be reimbursed for corrective action and payment to third parties for damages caused by releases from petroleum storage tanks;

(c) assist certain tank owners and operators in meeting financial assurance requirements under state and federal law governing releases from petroleum storage tanks; and

(d) provide tank owners with incentives to improve petroleum storage tank facilities in order to minimize the likelihood of accidental releases.

History: En. Sec. 1, Ch. 528, L. 1989; amd. Sec. 1, Ch. 763, L. 1991; amd. Sec. 1, Ch. 339, L. 1993; amd. Sec. 19, Ch. 361, L. 2003; amd. Sec. 23, Ch. 267, L. 2017.

75-11-302. Definitions. Except as provided in subsections (2), (14), and (25), the following definitions apply to this part:

(1) "Accidental release" means a sudden or nonsudden release, neither expected nor intended by the tank owner or operator, of petroleum or petroleum products from a storage tank that results in a need for corrective action or compensation for third-party bodily injury or property damage.

(2) "Aviation gasoline" means aviation fuel as defined in 15-70-401. For the purposes of this chapter, aviation gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.

(3) "Board" means the petroleum tank release compensation board established in 2-15-2108.

(4) "Bodily injury" means physical injury, sickness, or disease sustained by an individual, including death that results from the physical injury, sickness, or disease at any time.

(5) "Claim" means a written request prepared and submitted by an owner or operator or an agent of the owner or operator for reimbursement of expenses caused by an accidental release from a petroleum storage tank.

(6) "Corrective action" means investigation, monitoring, cleanup, restoration, abatement, removal, and other actions necessary to respond to a release.

(7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Distributor" means a person who is licensed to sell gasoline or special fuel, as provided in 15-70-402, and who:

(a) in the state of Montana, engages in the business of producing, refining, manufacturing, or compounding gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution;

(b) imports gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution in this state;

(c) engages in wholesale distribution of gasoline, aviation gasoline, special fuel, or heating oil in this state;

(d) is an exporter;

(e) is a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

(f) either blends gasoline with ethanol or blends heating oil with waste oil.

(9) "Eligible costs" means expenses reimbursable under 75-11-307.

(10) "Export" means to transport out of the state of Montana, by means other than in the fuel supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline terminal within the state of Montana.

(11) "Exporter" means a person who transports, by means other than in the fuel supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline terminal within the state of Montana to a destination outside the state of Montana for sale, use, or consumption beyond the boundaries of the state of Montana.

(12) "Fee" means the petroleum storage tank cleanup fee provided for in 75-11-314.

(13) "Fund" means the petroleum tank release cleanup fund established in 75-11-313.

(14) "Gasoline" means gasoline as defined in 15-70-401. For the purposes of this chapter, gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.

(15) "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils, including navy special fuel oil and bunker C; and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

(16) "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at a destination within the state any gasoline, aviation gasoline, special fuel, or heating oil shipped or transported into this state from a point of origin outside this state, other than in the fuel supply tank of a motor vehicle.

(17) "Operator" means a person in control of or having responsibility for the daily operation of a petroleum storage tank.

(18) (a) "Owner" means:

(i) a person that holds title to, controls, or possesses an interest in a petroleum storage tank; or

(ii) a person that owns the property on which a petroleum storage tank from which a release occurred was located.

(b) The term does not include a person that holds an interest in a storage tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank.

(19) "Person" means an individual, firm, trust, estate, partnership, company, association, joint-stock company, syndicate, consortium, commercial entity, corporation, or agency of state or local government.

(20) "Petroleum" or "petroleum products" means crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute) or motor fuel blend, such as ethanol-blended gasoline, and that is not augmented or compounded by more than a de minimis amount of another substance.

(21) "Petroleum storage tank" means a tank that contains or contained petroleum or petroleum products and that is:

(a) an underground storage tank as defined in 75-11-503;

(b) a storage tank that is situated in an underground area, such as a basement, cellar, mine, drift, shaft, or tunnel;

(c) an aboveground storage tank with a capacity of less than 30,000 gallons; or

(d) aboveground or underground pipes associated with tanks under subsections (21)(b) and (21)(c), except that pipelines regulated under the following laws are excluded:

(i) the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. 1671, et seq.;

(ii) the Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. 2001, et seq.; and

(iii) state law comparable to the provisions of law referred to in subsections (21)(d)(i) and (21)(d)(ii), if the facility is intrastate.

(22) "Properly designed and installed double-walled tank system" means a petroleum storage tank and associated product piping that is designed and constructed with rigid inner

and outer walls separated by an interstitial space and that is capable of being monitored for leakage. The design and construction of these tank systems must meet any applicable standards of the department and the department of justice fire prevention and investigation bureau. The material used in construction must be compatible with the liquid to be stored in the system, and the system must be designed to prevent the release of any stored liquid.

(23) "Property damage" means:

(a) physical injury to tangible property, including loss of use of that property caused by the injury; or

(b) loss of use of tangible property that is not physically injured.

(24) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum or petroleum products from a petroleum storage tank into ground water, surface water, surface soils, or subsurface soils.

(25) "Special fuel" means those combustible liquids commonly referred to as diesel fuel or another volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas. For the purposes of this chapter, special fuel does not include diesel fuel sold to a railroad or a federal defense fuel supply center.

History: En. Sec. 2, Ch. 528, L. 1989; amd. Sec. 1, Ch. 389, L. 1991; amd. Sec. 2, Ch. 763, L. 1991; amd. Sec. 1, Ch. 298, L. 1993; amd. Sec. 2, Ch. 339, L. 1993; amd. Sec. 212, Ch. 418, L. 1995; amd. Sec. 33, Ch. 112, L. 1997; amd. Sec. 1, Ch. 420, L. 1999; amd. Sec. 121, Ch. 114, L. 2003; amd. Sec. 19, Ch. 100, L. 2007; amd. Sec. 1, Ch. 396, L. 2009; amd. Sec. 38, Ch. 220, L. 2015.

75-11-303 through 75-11-306 reserved.

75-11-307. Reimbursement for expenses caused by release. (1) Subject to the availability of money from the fund under subsection (6), an owner or operator who is eligible under 75-11-308 and who complies with 75-11-309 and any rules adopted to implement those sections must be reimbursed by the board from the fund for the following eligible costs caused by a release from a petroleum storage tank:

(a) corrective action costs as required by a department-approved corrective action plan, except that if the corrective action plan:

(i) addresses releases of substances other than petroleum products from an eligible petroleum storage tank, the board may reimburse only the costs that would have reasonably been incurred if the only release at the site was the release of the petroleum or petroleum products from the eligible petroleum storage tank;

(ii) includes the establishment of a petroleum mixing zone, as defined in 75-11-503, the board may reimburse the cost of an easement established pursuant to 75-11-508; or

(iii) includes costs for the purpose of intentionally remediating the release from a petroleum storage tank that exceed department standards; and

(b) compensation paid to third parties for bodily injury or property damage. The board may not reimburse for property damage until the corrective action is completed.

(2) An owner or operator may not be reimbursed from the fund for the following expenses:

(a) corrective action costs or the costs of bodily injury or property damage paid to third parties that are determined by the board to be ineligible for reimbursement;

(b) costs for bodily injury and property damage, other than corrective action costs, incurred by the owner or operator;

(c) penalties or payments for damages incurred under actions by the department, board, or federal, state, local, or tribal agencies or other government entities involving judicial or administrative enforcement activities and related negotiations;

(d) attorney fees and legal costs of the owner, the operator, or a third party;

(e) costs for the repair or replacement of a tank or piping or costs of other materials, equipment, or labor related to the operation, repair, or replacement of a tank or piping;

(f) expenses incurred before January 1, 1984, for owners or operators seeking reimbursement from the petroleum tank release cleanup fund and expenses incurred before May 15, 1991, for owners or operators seeking reimbursement from the petroleum tank release cleanup fund for a tank storing heating oil for consumptive use on the premises where it is stored or for a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes;

(g) expenses exceeding the maximum reimbursements provided for in subsection (4);

(h) costs for which an owner or operator has received reimbursement or payment from an insurer or other third party, including a grantor;

(i) expenses for work completed by or on behalf of the owner or operator more than 5 years prior to the owner's or operator's request for reimbursement. This limitation does not apply to claims for compensation paid to third parties for bodily injury or property damage. The running of the 5-year limitation period is suspended by an appeal of the board's denial of eligibility for reimbursement. If a written request for hearing is filed under 75-11-309, the suspension of the 5-year limitation period is effective from the date of the board's initial eligibility denial to the date on which the initial eligibility denial is overturned or reversed by the board, a district court, or the state supreme court, whichever occurs latest. The board may grant reasonable extensions of this limitation period if it is shown that the need for the extension is not due to the negligence of the owner or operator or agent of the owner or operator.

(j) costs that the board has determined are not reasonable costs of responding to the release and implementing the corrective action plan, as provided for in 75-11-309, including costs included in a department-approved corrective action plan for the purpose of remediating the release in excess of department standards.

(3) An owner or operator may designate a person, including a grantor, as an agent to receive the reimbursement for eligible costs incurred by the person if the owner or operator remains legally responsible for all costs and liabilities incurred as a result of the release.

(4) Subject to the availability of funds under subsection (6):

(a) for releases eligible for reimbursement from the fund that are discovered and reported on or after January 1, 1984, from a tank storing heating oil for consumptive use on the premises where it is stored or from a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes, the board shall reimburse an owner or operator for:

(i) 100% of the eligible costs, up to a maximum total reimbursement of $500,000, for properly designed and installed double-walled tank system releases that were discovered and reported on or after October 1, 1993, and before October 1, 2009; or

(ii) 50% of the first $10,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of $495,000 for all other releases; and

(b) for all other releases eligible for reimbursement from the fund that are discovered and reported on or after January 1, 1984, the board shall reimburse an owner or operator for:

(i) 100% of the eligible costs, up to a maximum total reimbursement of $1 million, for properly designed and installed double-walled tank system releases that were discovered and reported on or after October 1, 1993, and before October 1, 2009; or

(ii) 50% of the first $35,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of $982,500 for all other releases.

(5) If an insurer or grantor pays or reimburses an owner or operator for costs that qualify as eligible costs under subsection (1), the costs paid or reimbursed by the insurer or grantor:

(a) are considered to have been paid by the owner or operator toward satisfaction of the 50% share requirements of subsection (4)(a)(ii) or (4)(b)(ii) if the owner or operator receives the payment or reimbursement before applying for reimbursement from the board;

(b) are not reimbursable from the fund unless the grantor is designated by the owner or operator as an agent to receive the reimbursement for eligible costs incurred by the grantor; and

(c) except for the amount considered to have been paid by the owner or operator pursuant to subsection (5)(a), are considered to have been reimbursed from the fund for purposes of determining when the board has paid the maximum amount payable from the fund under subsection (4)(a)(ii) or (4)(b)(ii).

(6) If the ending monthly balance of the fund is less than $1.5 million, excluding a reimbursement for a cost associated with an emergency response, a reimbursement may not be made and the fund and the board are not liable for making any reimbursement for the costs at that time. When the ending monthly balance of the fund contains more than $1.5 million, eligible costs must be reimbursed subsequently in the order in which they were approved by the board.

History: **En. Sec. 3, Ch. 528, L. 1989; amd. Sec. 2, Ch. 389, L. 1991; amd. Sec. 3, Ch. 763, L. 1991; amd. Sec. 3, Ch. 339, L. 1993; amd. Sec. 2, Ch. 55, L. 1995; amd. Sec. 2, Ch. 115, L. 1997; amd. Sec. 1, Ch. 137, L. 2003; amd. Sec. 1, Ch. 245, L. 2003; amd. Sec. 2, Ch. 396, L. 2009; amd. Sec. 1, Ch. 189, L. 2011; amd. Sec. 1, Ch. 107, L. 2015; amd. Sec. 7, Ch. 296, L. 2015; amd. Sec. 1, Ch. 754, L. 2023; amd. Sec. 1, Ch. 189, L. 2025.**

Compiler's Comments
2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 189, L. 2025. Amendment effective July 1, 2025.

75-11-308. Eligibility. (1) An owner or operator is eligible for reimbursement for the applicable percentage as provided in 75-11-307(4)(a) and (4)(b) of eligible costs caused by a release from a petroleum storage tank only if:

(a) the release was discovered on or after January 1, 1984;

(b) the release occurred from:

(i) an underground storage tank, as defined in 75-11-503, that was in compliance with 75-11-509 at the time that the release was discovered;

(ii) a petroleum storage tank, as defined in 75-11-302, that was in compliance with the applicable state and federal laws and rules that the board determines pertain to the prevention and mitigation of a petroleum release from a petroleum storage tank at the time that the release was discovered; or

(iii) an underground storage tank, as defined in 75-11-503, that the board determines was unknown to both the property owner and the department prior to its discovery if the owner applies to the department for a closure permit in accordance with 75-11-212 within 30 days of the date upon which the owner first had knowledge of the tank and closes the tank in accordance with the requirements of the permit before the permit expires; and

(c) the release was an accidental release.

(2) An owner or operator is not eligible for reimbursement from the petroleum tank release cleanup fund for expenses caused by releases from the following petroleum storage tanks:

(a) a tank located at a refinery or a terminal of a refiner;

(b) a tank located at an oil and gas production facility;

(c) a tank that is or was previously under the ownership or control of a railroad, except for a tank that was operated by a lessee of a railroad in the course of nonrailroad operations;

(d) a tank belonging to the federal government;

(e) a tank owned or operated by a person who has been convicted of a substantial violation of state or federal law or rule that relates to the installation, operation, or management of petroleum storage tanks; or

(f) a mobile storage tank used to transport petroleum or petroleum products from one location to another.

History: En. Sec. 4, Ch. 528, L. 1989; amd. Sec. 3, Ch. 389, L. 1991; amd. Sec. 4, Ch. 763, L. 1991; amd. Sec. 4, Ch. 339, L. 1993; amd. Sec. 2, Ch. 420, L. 1999; amd. Sec. 1, Ch. 112, L. 2001; amd. Sec. 2, Ch. 245, L. 2003; amd. Sec. 2, Ch. 356, L. 2005; amd. Sec. 2, Ch. 189, L. 2025.

Compiler's Comments
2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 189, L. 2025. Amendment effective July 1, 2025.

75-11-309. Procedures for reimbursement of eligible costs — corrective action plans. (1) An owner or operator seeking reimbursement for eligible costs and the department shall comply with the following procedures:

(a) If an owner or operator discovers or is provided evidence that a release may have occurred from the owner's or operator's petroleum storage tank, the owner or operator shall immediately notify the department of the release and conduct an initial response to the release in accordance with state and federal laws and rules to protect the public health and safety and the environment.

(b) Except for a tank for which a permit is sought under 75-11-308(1)(b)(iii) and that is closed within 120 days of discovery of the release, following discovery of the release, the petroleum storage tank must remain in compliance with applicable state and federal laws and rules that the board determines pertain to prevention and mitigation of petroleum releases.

(c) The owner or operator shall conduct a thorough investigation of the release and, subject to subsection (1)(d), report the findings to the department, and, as determined necessary by the department, prepare and submit for approval by the department a corrective action plan that conforms with state, tribal (when applicable), and federal corrective action requirements.

(d) For a release in which the costs are expected to exceed $100,000, an owner or operator, a representative of the owner or operator, the department, the board, and board staff may meet to discuss the response to the release. For a release in which the costs are expected to be less

than $100,000, an owner or operator, a representative of the owner or operator, the department, the board, and board staff may meet to discuss the response to the release if any party requests a meeting.

(e) (i) The department shall review the corrective action plan and forward a copy to a local government office, the board, and, when applicable, a tribal government office with jurisdiction over a corrective action for the release. The local or tribal government office and the board shall inform the department if it wants any modification of the proposed plan.

(ii) Based on its own review and comments received from a local government, a tribal government, the board, or other source, the department, subject to 75-11-705(4)(b), may approve the proposed corrective action plan, make or request the owner or operator to modify the proposed plan, or prepare its own plan for compliance by the owner or operator. A plan finally approved by the department through any process provided in this subsection (1)(e) is the approved corrective action plan.

(iii) After the department approves a corrective action plan, a local government, or a tribal government, or the board may not impose different corrective action requirements on the owner or operator.

(f) A corrective action plan prepared by the owner, operator, or department for any petroleum storage tank release may include the establishment of a petroleum mixing zone as defined in 75-11-503.

(g) The department shall notify the owner or operator of its approval of a corrective action plan and shall promptly submit a copy of the approved corrective action plan to the board.

(h) The owner or operator shall implement the corrective action plan or plans approved by the department until the release is resolved. The department may oversee the implementation of the plan, require reports and monitoring from the owner or operator, undertake inspections, and otherwise exercise its authority concerning corrective action under Title 75, chapter 10, part 7, Title 75, chapter 11, part 5, and other applicable law and rules.

(i) (i) The owner or operator shall document in the manner required by the board all expenses incurred in preparing and implementing the corrective action plan. The owner or operator shall submit claims and substantiating documents to the board in the form and manner required by the board.

(ii) The board shall review each claim and determine if the claims are actual, reasonable, and necessary costs of responding to the release and implementing the corrective action plan.

(iii) If the board requires additional information to determine if a claimed cost is actual, reasonable, and necessary, the board may request comment from the department and the owner or operator.

(iv) If the department determines that an owner or operator is failing to properly implement a corrective action plan, it shall notify the board.

(j) The owner or operator shall document, in the manner required by the board, any payments to a third party for bodily injury or property damage caused by a release. The owner or operator shall submit claims and substantiating documents to the board in the form and manner required by the board.

(k) In addition to the documentation in subsections (1)(i) and (1)(j), when the release is claimed to have originated from a properly designed and installed double-walled tank system, the owner or operator shall document, in the manner required by the board, the following:

(i) the date that the release was discovered; and

(ii) that the originating tank was part of a properly designed and installed double-walled tank system.

(2) If an owner or operator is issued an administrative order for failure to comply with requirements imposed by or pursuant to Title 75, chapter 11, part 5, or rules adopted pursuant to Title 75, chapter 11, part 5, all reimbursement of claims submitted after the date of the order must be suspended. Upon a written determination by the department that the owner or operator has returned to compliance with the requirements of Title 75, chapter 11, part 5, or rules adopted pursuant to Title 75, chapter 11, part 5, suspended and future claims may be reimbursed according to criteria established by the board. In establishing the criteria, the board shall consider the effect and duration of the noncompliance.

(3) The board shall review each claim received under subsections (1)(i) and (1)(j), make the determination required by this subsection, inform the owner or operator of its determination, and, as appropriate, reimburse the owner or operator from the fund. Before approving a reimbursement, the board shall affirmatively determine that:

(a) the expenses for which reimbursement is claimed:

(i) are eligible costs; and

(ii) were actually, necessarily, and reasonably incurred for the preparation or implementation of a corrective action plan approved by the department or for payments to a third party for bodily injury or property damage; and

(b) the owner or operator:

(i) is eligible for reimbursement under 75-11-308; and

(ii) has complied with this section and any rules adopted pursuant to this section. Upon a determination by the board that the owner or operator has not complied with this section or rules adopted pursuant to this section, all reimbursement of pending and future claims must be suspended. Upon a determination by the board that the owner or operator has returned to compliance with this section or rules adopted pursuant to this section, suspended and future claims may be reimbursed according to criteria established by the board. In establishing the criteria, the board shall consider the effect and duration of the noncompliance.

(4) (a) If an owner or operator disagrees with a board determination under subsection (3), the owner or operator may submit a written request for a hearing before the board.

(b) A written request for a hearing must be received by the board within 120 days after notice of the board's determination is served on the owner or operator by certified mail. The notice of determination must advise the owner or operator of the 120-day time limit for submitting a written request for a hearing to the board. Not less than 50 days or more than 60 days after the board serves the notice of determination, the board shall serve on the owner or operator a second notice by certified mail advising the owner or operator of the deadline for requesting a hearing. Service by certified mail is complete on the date shown on the certified mail receipt.

(c) If a written request is received within 120 days, the hearing must be held at a meeting of the board or as otherwise permitted under the Montana Administrative Procedure Act no later than 120 days following receipt of the request or at a time mutually agreed to by the board and the owner or operator.

(d) If a written request is not received within 120 days, the determination of the board is final.

(5) The board shall obligate money for reimbursement of eligible costs of owners and operators in the order that the costs are finally approved by the board.

(6) (a) The board may, at the request of an owner or operator, guarantee in writing the reimbursement of eligible costs that have been approved by the board but for which money is not currently available from the fund for reimbursement.

(b) The board may, at the request of an owner or operator, guarantee in writing reimbursement of eligible costs not yet approved by the board, including estimated costs not yet incurred. A guarantee for payment under this subsection (6)(b) does not affect the order in which money in the fund is obligated under subsection (5).

(c) When considering a request for a guarantee of payment, the board may require pertinent information or documentation from the owner or operator. The board may grant or deny, in whole or in part, any request for a guarantee.

History: En. Sec. 5, Ch. 528, L. 1989; amd. Sec. 4, Ch. 389, L. 1991; amd. Sec. 5, Ch. 339, L. 1993; amd. Sec. 1, Ch. 355, L. 1993; amd. Sec. 34, Ch. 112, L. 1997; amd. Sec. 3, Ch. 245, L. 2003; amd. Sec. 3, Ch. 356, L. 2005; amd. Sec. 3, Ch. 396, L. 2009; amd. Sec. 2, Ch. 189, L. 2011; amd. Sec. 8, Ch. 296, L. 2015; amd. Sec. 2, Ch. 754, L. 2023; amd. Sec. 2, Ch. 207, L. 2025; amd. Sec. 10, Ch. 475, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section — Code Commissioner Correction: See 2025 Session Law for amendment made by sec. 2, Ch. 207, L. 2025. Amendment effective January 1, 2026.

See 2025 Session Law for amendment made by sec. 10, Ch. 475, L. 2025. Amendment effective October 1, 2025.

In (1)(e)(ii) the Code Commissioner substituted "subsection (1)(e)" for "subsection (1)(d)" to correct an erroneous reference.

75-11-310. *(Effective January 1, 2026)* **Procedures for reimbursement of preventative measures.** (1) Subject to the availability of money from the fund provided for in 75-11-307(6) and in accordance with rules adopted by the board, an owner or operator of a Montana facility

that is actively dispensing petroleum must be reimbursed by the board for the following preventive measures:

(a) removal of inactive tanks;

(b) upgraded automatic tank gauges;

(c) piping replacements for single-walled product piping;

(d) replacement of single-wall steel tanks for underground tank systems that are 20 years old or older;

(e) replacement of single wall fiberglass reinforced plastic tanks that are 20 years old or older;

(f) underground storage tank removal investigations for aging tanks nearing 30 years old that have been in compliance; and

(g) preventative inspections, including compliance and walk-through inspections.

(2) The board shall reimburse an owner or operator up to $2,000 a facility every 1,000 days.

(3) (a) The owner or operator shall document in the manner required by the board all preventive measures and submit them for reimbursement to the board in the form and manner required by the board.

(b) The owner or operator shall submit one claim for all costs for the 1,000 days following the facility's last state-required compliance inspection. An owner or operator may submit only one claim every 1,000 days for a facility.

(c) The board may not consider claims for reimbursement submitted less than 1,000 days following the facility's last state-required compliance inspection.

(4) The board shall review and approve each request that meets the requirements of this section, inform the owner or operator of the approval, and reimburse the owner or operator from the fund.

History: En. Sec. 1, Ch. 207, L. 2025.

Compiler's Comments

Effective Date: Section 6, Ch. 207, L. 2025, provided: "[This act] is effective January 1, 2026."

75-11-311 reserved.

75-11-312. Review of corrective action plans and claims. (1) To ensure that the fund provided for in 75-11-313 is being used in the most efficient manner, the board shall implement a program of third-party review for corrective action plans and claims. The board may submit a corrective action plan or claim for review by a qualified third party of the board's choosing.

(2) If a third-party review suggests that a corrective action plan is inappropriate for the release, the board may remand the plan to the department for further review.

(3) If a third-party review suggests that submitted costs do not comply with the requirements of 75-11-309(3)(a), the board may deny the costs, subject to 75-11-309(4).

History: En. Sec. 4, Ch. 245, L. 2003; amd. Sec. 4, Ch. 356, L. 2005; amd. Sec. 3, Ch. 754, L. 2023.

75-11-313. Petroleum tank release cleanup fund. (1) There is a petroleum tank release cleanup fund in the state special revenue fund established in 17-2-102. The fund is administered as a revolving fund by the board and is statutorily appropriated, as provided in 17-7-502, for the purposes provided for under subsections (3)(c) through (3)(e). Administrative costs under subsections (3)(a) and (3)(b) must be paid pursuant to a legislative appropriation.

(2) There is deposited in the fund:

(a) all revenue from the petroleum storage tank cleanup fee as provided in 75-11-314;

(b) money received by the board in the form of gifts, grants, reimbursements, or appropriations, from any source, intended to be used for the purposes of this fund;

(c) money appropriated or advanced to the fund by the legislature;

(d) money loaned to the board by the board of investments; and

(e) all interest earned on money in the fund.

(3) As provided in 75-11-318, the fund may be used only:

(a) to administer this part, including payment of board expenses associated with administration;

(b) to pay the actual and necessary department expenses associated with administration;

(c) to reimburse owners and operators for eligible costs caused by a release from a petroleum storage tank and approved by the board;

(d) to reimburse owners and operators for preventative measures approved by the board pursuant to 75-11-310; and

(e) for repayment of any advance and any loan made pursuant to 17-6-225, plus interest earned on the advance or loan.

(4) Whenever the board accepts a loan from the board of investments pursuant to 17-6-225, the receipts from the fees provided for in 75-11-314 in each fiscal year until the loan is repaid are pledged and dedicated for the repayment of the loan in an amount sufficient to meet the repayment obligation for that fiscal year."

History: En. Sec. 6, Ch. 528, L. 1989; amd. Sec. 1, Ch. 543, L. 1993; amd. Sec. 272, Ch. 42, L. 1997; amd. Sec. 3, Ch. 115, L. 1997; amd. Sec. 5, Ch. 245, L. 2003; amd. Sec. 3, Ch. 207, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 207, L. 2025. Amendment effective January 1, 2026.

75-11-314. Petroleum storage tank cleanup fee — collection — penalties — warrant for distraint — statute of limitations. (1) Except as provided in subsection (4), each distributor shall pay to the department of transportation a petroleum storage tank cleanup fee for each gallon of gasoline, aviation gasoline, special fuel, or heating oil distributed by the distributor within the state and upon which the fee has not been paid by any other distributor. The fee must equal:

(a) 0.75 cent for each gallon of gasoline;

(b) 0.75 cent for each gallon of aviation gasoline;

(c) 0.75 cent for each gallon of special fuel; or

(d) 0.75 cent for each gallon of heating oil.

(2) Gasoline, aviation gasoline, special fuel, and heating oil exported or sold for export out of the state must be included in the measure of a distributor's fee.

(3) Ethanol that is blended with gasoline to be sold as ethanol-blended gasoline is subject to the fee provided in subsection (1).

(4) A fee may not be imposed or collected beginning on the first day of the first month in the first calendar quarter after the unobligated balance in the fund equals or exceeds $10 million. Whenever the unobligated fund balance, less claims anticipated for board approval within the next 90 days, is less than $6 million, the department of transportation shall, within 30 days, notify distributors by mail that the fee is reinstated beginning on the first day of the first month that begins no less than 30 days after the date of the notice. Once reinstated, the fee must be imposed and collected until the unobligated fund balance again equals or exceeds $10 million.

(5) The department of transportation shall collect the fee in the same manner as the gasoline tax and special fuel tax under Title 15, chapter 70, part 4. The provisions of 15-70-103, 15-70-111, 15-70-402, 15-70-410, 15-70-411, 15-70-416 through 15-70-418, 15-70-420, 15-70-421, 15-70-425(3), and 15-70-443 apply to the fee. The provisions of 15-70-403, 15-70-412, 15-70-425(1), and 15-70-426 do not apply to the fee.

History: En. Sec. 7, Ch. 528, L. 1989; amd. Sec. 2, Ch. 298, L. 1993; amd. Sec. 4, Ch. 37, L. 1999; amd. Sec. 20, Ch. 100, L. 2007; amd. Sec. 4, Ch. 396, L. 2009; amd. Sec. 39, Ch. 220, L. 2015.

75-11-315. Nonimpairment by state. In accordance with the constitutions of the United States and the state of Montana, the state pledges that it may not in any way impair the obligations of any loan agreement between the board and the board of investments by repealing the petroleum storage tank cleanup fee imposed by 75-11-314 or by reducing it below the amount necessary to make annual loan payments.

History: En. Sec. 5, Ch. 115, L. 1997.

Cross-References

Prohibition against impairment of contracts, Art. II, sec. 31, Mont. Const.

75-11-316 and 75-11-317 reserved.

75-11-318. Powers and duties of board. (1) The board shall administer the petroleum tank release cleanup fund in accordance with the provisions of this part, including the payment

of reimbursement to owners and operators. The board may hire its own staff to assist in the implementation of this part.

(2) The board shall determine whether to approve reimbursement of eligible costs under the provisions of 75-11-309(3) and costs of preventative measures under 75-11-310, shall obligate money from the fund for approved costs, and shall act on requests for the guarantee of payments through the procedures and criteria provided in 75-11-309.

(3) The board may conduct meetings, hold hearings, undertake legal action, and conduct other business that may be necessary to administer its responsibilities under this part. The board shall meet at least quarterly for the purpose of reviewing and approving claims for reimbursement from the fund and conducting other business as necessary.

(4) The board shall use the fund to pay for:

(a) department expenses incurred in providing assistance to the board. The board shall review and comment on all department administrative budget proposals that are assessed against the fund prior to submittal of the department budget for legislative approval. Department administrative expenses on behalf of the board may include:

(i) the review or preparation of corrective action plans;

(ii) the oversight of corrective action undertaken by owners and operators for the purposes of this part; and

(iii) the actual and necessary administrative support provided to the board.

(b) department of transportation staff expenses used for the collection of the petroleum storage tank cleanup fee;

(c) third-party review of corrective action plans or claims pursuant to 75-11-312;

(d) board staff expenses; and

(e) expenses of implementing the board's duties as provided in this part.

(5) The board shall adopt rules to administer this part, including:

(a) rules governing submission of claims by owners or operators to the department and board;

(b) procedures for determining owners or operators who are eligible for reimbursement and determining the validity of claims;

(c) procedures for the review and approval of corrective action plans;

(d) procedures for conducting board meetings, hearings, and other business necessary for the implementation of this part;

(e) the criteria and reimbursement rates applicable to those owners and operators who comply with a violation letter issued by the department;

(f) procedures for third-party review of corrective action plans or claims pursuant to 75-11-312;

(g) procedures for reviewing and reimbursing costs of preventative measures pursuant to 75-11-310; and

(h) other rules necessary for the administration of this part.

(6) The board may apply for, accept, and repay loans from the board of investments pursuant to 17-6-225.

(7) The board shall conduct an analysis of the short-term and long-term viability of the fund and report its findings to the director of the department and the legislative auditor by July 1 prior to each regular legislative session. This analysis must include but is not limited to:

(a) trends in fund revenue and expenditure activity;

(b) exposure to long-term liabilities;

(c) impacts of changes in state and federal regulations relating to underground and aboveground storage tanks;

(d) availability of petroleum storage tank liability insurance in the private sector and trends in provisions of the insurance; and

(e) the continuing need for collection of all or part of the petroleum tank release cleanup fee.

History: En. Sec. 9, Ch. 528, L. 1989; amd. Sec. 5, Ch. 763, L. 1991; amd. Sec. 4, Ch. 115, L. 1997; amd. Sec. 2, Ch. 259, L. 1999; amd. Sec. 2, Ch. 112, L. 2001; amd. Sec. 6, Ch. 245, L. 2003; amd. Sec. 5, Ch. 356, L. 2005; amd. Sec. 4, Ch. 754, L. 2023; amd. Sec. 4, Ch. 207, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 207, L. 2025. Amendment effective January 1, 2026.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

75-11-319. Rulemaking authority — department and department of transportation. (1) The department may adopt rules necessary to administer its responsibilities under this part, including requirements for approval of corrective action plans.

(2) The department of transportation shall adopt rules governing the collection of the petroleum storage tank cleanup fee. The rules may include, at a minimum, reporting and recordkeeping requirements, method and timing of payment, and examination of records. The rules must be generally consistent with procedures governing the collection of the gasoline tax provided for in Title 15, chapter 70.

History: En. Sec. 10, Ch. 528, L. 1989.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

75-11-320. Other authorities unaffected. Payment of reimbursement, approval of a corrective action plan, or other action of the department or the board under this part does not affect the authority of the department or any other state agency to pursue an action authorized by Title 75, chapter 10, parts 4 or 7, or any other law or rule that applies to releases from petroleum storage tanks.

History: En. Sec. 11, Ch. 528, L. 1989.

75-11-321. Criminal penalties. A person who knowingly misrepresents the date of discovery of a release, submits or causes to be submitted a fraudulent claim or document, or makes a false statement or representation in seeking or assisting a person to seek reimbursement under this part is subject to a fine not to exceed $10,000 for each violation or imprisonment not to exceed 6 months, or both. A person convicted of a second or subsequent violation of this section is subject to a fine not to exceed $20,000 for each violation or imprisonment not to exceed 1 year, or both.

History: En. Sec. 12, Ch. 528, L. 1989.

75-11-322. Liability — defense and exclusions. (1) A person has a defense against liability in a tort action for damages suffered as a result of an act or omission that constitutes a violation of this part, a rule adopted under this part, or a condition of a permit or authorization required by a rule adopted under this part if the person can establish by a preponderance of the evidence that:

(a) the person is a government entity that acquired ownership or control through bankruptcy, tax delinquency, abandonment, or lien foreclosure in which the government entity acquired title by virtue of the government entity's authority;

(b) the person has not caused or contributed to the violation; and

(c) the person is making an effort to abate the violation.

(2) For the purposes of this part, "government entity" includes a consolidated city-county, a county, and an incorporated city or town.

History: En. Sec. 4, Ch. 159, L. 2013.

Part 4
Montana Petroleum Brownfields Revitalization Act (Repealed)

75-11-401. Repealed. Sec. 11, Ch. 475, L. 2025.

History: En. Sec. 1, Ch. 296, L. 2015.

75-11-402. Repealed. Sec. 11, Ch. 475, L. 2025.

History: En. Sec. 2, Ch. 296, L. 2015.

75-11-403. Repealed. Sec. 11, Ch. 475, L. 2025.

History: En. Sec. 3, Ch. 296, L. 2015; amd. Sec. 1, Ch. 57, L. 2023.

75-11-404 through 75-11-406 reserved.

75-11-407. Repealed. Sec. 11, Ch. 475, L. 2025.
History: En. Sec. 4, Ch. 296, L. 2015.

75-11-408. Repealed. Sec. 11, Ch. 475, L. 2025.
History: En. Sec. 5, Ch. 296, L. 2015; amd. Sec. 2, Ch. 57, L. 2023.

75-11-409. Repealed. Sec. 11, Ch. 475, L. 2025.
History: En. Sec. 6, Ch. 296, L. 2015.

Part 5
Montana Underground Storage Tank Act

75-11-501. Short title. This part shall be known and may be cited as the "Montana Underground Storage Tank Act".
History: En. Sec. 1, Ch. 112, L. 1997.

75-11-502. Intent, findings, and purpose. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Underground Storage Tank Act. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) The legislature finds that petroleum products and hazardous substances stored in underground tanks are regulated under the federal Resource Conservation and Recovery Act of 1976, as amended, and must be addressed and controlled properly by the state under this part. It is the purpose of this part to authorize the department to establish, administer, and enforce an underground storage tank leak prevention program for these regulated substances. The department may use the authority provided in this part and other appropriate authority provided by law to remedy violations of requirements established under this part.
History: En. Sec. 2, Ch. 112, L. 1997; amd. Sec. 20, Ch. 361, L. 2003.

75-11-503. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Department" means the department of environmental quality provided for in 2-15-3501.

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any regulated substance into or onto the land or water so that the regulated substance or any constituent of the regulated substance may enter the environment or be emitted into the air or discharged into any waters, including ground water.

(4) "Person" means the United States, an individual, firm, trust, estate, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(5) "Petroleum mixing zone" means an area where water quality standards for petroleum and petroleum constituents may be exceeded subject to the conditions of 75-11-508 and consistent with rules adopted under 75-11-318, 75-11-319, and 75-11-505.

(6) "Regulated substance":

(a) means:

(i) a hazardous substance as defined in 75-10-602; or

(ii) petroleum, including crude oil or any fraction of crude oil, that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute);

(b) does not include a substance regulated as a hazardous waste under Title 75, chapter 10, part 4.

(7) "Storage" means the actual or intended containment of regulated substances, either on a temporary basis or for a period of years.

(8) "Underground storage tank" or "tank":

(a) means, except as provided in subsections (8)(b)(i) through (8)(b)(xii):

(i) any one or a combination of tanks used to contain a regulated substance, the volume of which is 10% or more beneath the surface of the ground;

(ii) any underground pipes used to contain or transport a regulated substance and connected to a storage tank, whether the storage tank is entirely above ground, partially above ground, or entirely under ground; and

(iii) ancillary equipment designed to prevent, detect, or contain a release from an underground storage tank;

(b) does not include:

(i) a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100 gallons or less and that is used for storing motor fuel for noncommercial purposes;

(ii) a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100 gallons or less and that is used for storing heating oil for consumptive use on the premises where it is stored;

(iii) farm or residential underground pipes that were installed as of April 27, 1995, and that are used to contain or to transport motor fuels for noncommercial purposes or heating oil for consumptive use on the premises where it is stored from an aboveground storage tank with a capacity of 1,100 gallons or less;

(iv) a septic tank;

(v) a pipeline facility, including gathering lines, regulated under:

(A) the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. 1671, et seq.;

(B) the Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. 2001, et seq.; or

(C) state law comparable to the provisions of law referred to in subsection (8)(b)(v)(A) or (8)(b)(v)(B) if the facility is intrastate;

(vi) a surface impoundment, pit, pond, or lagoon;

(vii) a storm water or wastewater collection system;

(viii) a flow-through process tank;

(ix) a liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

(x) a storage tank situated in an underground area, such as a basement, cellar, mine, draft, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor;

(xi) any pipe connected to a tank described in subsections (8)(b)(i) through (8)(b)(ix); or

(xii) underground pipes connected to an aboveground storage tank at a petroleum refinery that is subject to:

(A) facilitywide corrective action permit provisions under 75-10-406 or the federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 through 6987, as amended; or

(B) a facilitywide corrective action order under 75-10-425 or the federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 through 6987, as amended.

History: En. Sec. 3, Ch. 112, L. 1997; amd. Sec. 2, Ch. 156, L. 1997; amd. Sec. 2, Ch. 137, L. 2003; amd. Sec. 3, Ch. 189, L. 2011; amd. Sec. 1, Ch. 141, L. 2013.

75-11-504. Powers of department. (1) The department may:

(a) administer and enforce the provisions of this part, rules implementing this part, and orders and permits issued pursuant to this part;

(b) accept and administer grants from the federal government and from other sources, public and private;

(c) abate public nuisances that affect the public health and welfare or the environment and that arise from or in connection with the past or present handling or disposal of any regulated substance; and

(d) enter property and permanently close an underground storage tank that:

(i) was in use after November 22, 1989;

(ii) was not permanently closed before December 23, 1998, in accordance with closure requirements established by this part; and

(iii) was neither:

(A) initially installed in accordance with design requirements established pursuant to this part; nor

(B) upgraded in accordance with rules adopted pursuant to this part.

(2) The department shall integrate all provisions of this part with other laws administered by the department to avoid unnecessary duplication.

History: En. Sec. 4, Ch. 112, L. 1997; amd. Sec. 10, Ch. 506, L. 1999.

Cross-References
Nuisances, Title 27, ch. 30.

75-11-505. Administrative rules — underground storage tanks — petroleum mixing zones. (1) The department may adopt, amend, or repeal rules for the prevention and correction of leakage from underground storage tanks, including:

(a) reporting by owners and operators;

(b) financial responsibility;

(c) release detection, prevention, and corrective action;

(d) procedures and standards for the issuance, nonissuance, renewal, nonrenewal, modification, revocation, suspension, and enforcement of permits authorizing the operation of underground storage tanks;

(e) standards for design, construction, installation, and closure;

(f) in collaboration with stakeholders, development of a schedule of annual fees, not to exceed $300 for a tank over 1,100 gallons and not to exceed $100 for a tank 1,100 gallons or less, for each tank, for tank registration to defray state and local costs of implementing an underground storage tank program. The department may prorate fees to cover periods not equal to 12 months in order to provide staggered scheduling of renewal dates.

(g) a system for assessment of administrative penalties, notice, and appeals under 75-11-525; and

(h) delegation of authority and funds to local agents for inspections and implementation. The delegation of authority to local agents must complement and may not duplicate existing authority for implementation of rules adopted by the department of justice that relate to underground storage tanks.

(2) In accordance with 75-11-508, the department:

(a) shall adopt rules governing the inclusion of a petroleum mixing zone, as defined in 75-11-503, in a corrective action plan; and

(b) may incorporate by reference rules adopted pursuant to 75-5-301 and 75-5-303 related to mixing zones for ground water.

History: En. Sec. 5, Ch. 112, L. 1997; amd. Sec. 13, Ch. 506, L. 1999; amd. Sec. 3, Ch. 137, L. 2003; amd. Sec. 1, Ch. 51, L. 2007; amd. Sec. 4, Ch. 189, L. 2011; amd. Sec. 68, Ch. 324, L. 2021; amd. Sec. 1, Ch. 543, L. 2025.

Compiler's Comments
2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 543, L. 2025. Amendment effective May 8, 2025.

Cross-References
Adoption and publication of rules, Title 2, ch. 4, part 3.

75-11-506 and 75-11-507 reserved.

75-11-508. Corrective action — petroleum mixing zones. (1) A corrective action plan prepared pursuant to 75-11-309 may include the use of a petroleum mixing zone, as defined in 75-11-503, in conjunction with the final remediation and resolution of a petroleum release.

(2) If a petroleum mixing zone is included in a corrective action plan, it may be established only when:

(a) all source material has been removed to the maximum extent practicable;

(b) the extent of petroleum contamination has been defined;

(c) natural breakdown or attenuation is occurring within the plume; and

(d) no further corrective action is reasonably required at the site.

(3) The boundary of a petroleum mixing zone established in accordance with this section must be contained within the boundary of the property on which the petroleum release originated unless a recorded easement, a restrictive covenant, or another institutional control approved by the department on an adjoining property allows the petroleum mixing zone to extend onto the adjoining property.

(4) Monitoring of a petroleum mixing zone may not be required unless there is a unique, overriding, site-specific, impact-related reason to require monitoring.

(5) At the downgradient boundary of a petroleum mixing zone, the concentration of any petroleum constituent, including benzene, may not exceed a water quality standard adopted pursuant to 75-5-301.

(6) If a petroleum mixing zone is established and maintained:

(a) the petroleum release is considered resolved;

(b) no further corrective action for the petroleum release is required; and

(c) the department shall issue a no-further-action letter to the owner or operator stating that a petroleum mixing zone has been established for the release and describing any conditions required to maintain the petroleum mixing zone.

(7) A corrective action plan approved by the department pursuant to 75-11-309 may be amended to include a petroleum mixing zone in accordance with this section, including a corrective action plan approved prior to April 15, 2011.

History: En. Sec. 5, Ch. 189, L. 2011; amd. Sec. 2, Ch. 107, L. 2015; amd. Sec. 69, Ch. 324, L. 2021.

75-11-509. Inspections — permits. (1) The owner or operator of an active underground storage tank must have the tank inspected for compliance with this part by January 1, 2002, and at least once every 3 years thereafter by an inspector who is licensed pursuant to Title 75, chapter 11, part 2, to perform underground storage tank inspections. The inspector may not be:

(a) the owner or operator of the tank;

(b) an employee of the owner or operator; or

(c) for the first inspection required by this subsection (1) and for a period of 3 years after the installation or modification of the tank was completed, the installer who installed or modified the tank and whose name or signature was on the permit required by 75-11-212.

(2) The owner or operator of an inactive underground storage tank shall comply with requirements for testing, inspection, recordkeeping, and reporting provided in rules adopted pursuant to this part.

(3) The department may by rule authorize temporary permits for the installation, testing, and operation of underground storage tanks. The requirements in subsection (8) for a 3-year permit term and for permit issuance only after inspection by a licensed inspector do not apply to temporary permits.

(4) The department shall by rule provide:

(a) requirements for the scope and timing of inspections; and

(b) requirements for testing, inspection, recordkeeping, and reporting for inactive tanks to ensure that these tanks do not pose a threat to public health, safety, or the environment while inactive or upon their return to active status.

(5) The inspector shall provide the owner or operator with an inspection report that meets the requirements of rules adopted by the department to ensure compliance with this part and rules adopted pursuant to this part.

(6) The owner or operator shall retain the original inspection report and mail a copy to the department.

(7) If the inspection report indicates violations, the owner or operator shall correct the violations and obtain a followup inspection. Followup inspection reports must be provided to the owner or operator and to the department.

(8) A person may not place a regulated substance in an underground storage tank unless the owner or operator has been issued a valid permit from the department for the tank. Permits must be issued for a term of 3 years. The department may not issue or renew a permit unless the owner or operator has filed with the department an inspection report by a licensed inspector. Prior to issuing or renewing a permit, the department shall determine, on the basis of the inspection report and other relevant information, whether the operation and maintenance of the tank were in compliance with this part and rules adopted pursuant to this part on the date of inspection.

(9) The department may determine to not issue or not renew a permit for a tank if the department finds that there has been significant noncompliance with this part or with rules, permits, or orders issued pursuant to this part. If the department proposes to not issue or not renew a permit, it must have a written notice letter served personally or by certified mail on the owner or operator informing the owner or operator of the reason for the action. The owner or operator may request a hearing before the board. The hearing request must be in writing and must be filed with the board no later than 30 days after the service of the notice letter. The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing conducted under this section.

History: En. Sec. 12, Ch. 506, L. 1999; amd. Sec. 1, Ch. 244, L. 2001; amd. Sec. 4, Ch. 137, L. 2003; amd. Sec. 1, Ch. 20, L. 2005.

75-11-510. Underground storage tank leak report — inspections — sampling. (1) If an owner or operator of an underground storage tank discovers or is provided with evidence that a tank may have leaked, the owner or operator shall immediately notify the department that a leak may exist.

(2) (a) An employee or agent of the department, at any reasonable time and upon presentation of credentials, may enter upon and inspect any property, premises, or place at which:

(i) regulated substances are or have been stored in underground storage tanks if the department has reason to suspect that the tanks are not in compliance with the provisions of this part or rules adopted under this part; or

(ii) records pertinent to the regulated substances activities are maintained.

(b) The employee or agent of the department may have access to and may copy any records relating to the regulated substances for the purposes of developing rules under this part or enforcing the provisions of this part, rules adopted under this part, or a permit or an order issued under this part.

(3) In the course of an inspection under this section, the employee or agent of the department may take samples of any regulated substance or suspected regulated substance, including samples from any soil or ground water. If the employee or agent of the department takes a sample of any regulated substance or suspected regulated substance, the employee or agent shall, prior to leaving the premises, give to the owner, operator, or agent in charge a receipt describing the sample taken and, if requested, a portion of each sample equal in volume or weight to the portion retained. If any analysis is made of the samples, a copy of the results of the analysis must be furnished to the owner, operator, or agent in charge.

History: En. Sec. 6, Ch. 112, L. 1997.

Cross-References

Searches and seizures — right of private individual to be secure, Art. II, sec. 11, Mont. Const.

75-11-511. Regulated substance inventory. (1) The department is authorized to conduct an inventory of sites and locations in the state where regulated substances have been stored or disposed of at any time.

(2) If the department determines that the presence of a regulated substance or the release of the regulated substance may present a substantial hazard to the public health or to the environment, it may issue an order requiring the owner or operator of the site to conduct reasonable monitoring, testing, analysis, and reporting with respect to the site in order to ascertain the nature and extent of the hazard.

(3) An order issued under subsection (2) must require that the person to whom the order is issued submit to the department within 30 days a proposal for carrying out the required monitoring, testing, analysis, and reporting.

(4) If the department determines that the owner or operator referred to in subsection (2) is not able to conduct monitoring, testing, and analysis in a satisfactory manner, the department may conduct the activities.

(5) For the purposes of carrying out this section, the department may exercise the powers set forth in 75-11-510.

History: En. Sec. 7, Ch. 112, L. 1997.

75-11-512. Administrative enforcement. (1) When the department believes that a violation of this part or a rule adopted under this part has occurred, it may serve written notice of the violation personally or by certified mail on the alleged violator or the violator's agent. The notice must specify the provision of this part or the rule alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order. The order becomes final unless, within 30 days after the notice is served, the person named requests, in writing, a hearing before the board. On receipt of the request, the board shall schedule a hearing. Service by mail is complete on the date of receipt.

(2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it shall either affirm or modify the department's order. An order issued by the

department or by the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after hearing, the board finds that a violation has not occurred, it shall rescind the department's order.

(3) In addition to or instead of issuing an order pursuant to subsection (1), the department may:

(a) require the alleged violator to appear before the board or department, by subpoena or subpoena duces tecum, for a hearing at a time and place specified in the notice to answer the charges complained of or to provide information regarding the alleged violation or its actual or potential impact on the public health and welfare or the environment;

(b) initiate action under 75-11-513, 75-11-514, or 75-11-516; or

(c) assess administrative penalties and issue corrective action orders under 75-11-525.

(4) In the case of disobedience of any subpoena issued and served under this section or of the refusal of any witness to testify as to any material matter with regard to which the witness may be interrogated in a hearing or investigation before the board or the department, the board or department may apply to any district court in the state for an order to compel compliance with the subpoena or the giving of testimony. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified, the court shall enter an order requiring compliance. Disobedience of the order is punishable by contempt of court in the same manner and by the same procedures as is provided for like conduct committed in the course of civil actions in district court.

(5) If a person fails to comply with an order issued pursuant to subsection (1) or (3) within the time allowed in the order, the department may enter the property on which the underground storage tank that is in violation is located and temporarily close the tank. If the department finds that permanent closure is necessary to prevent substantial environmental harm or because the owner or operator is unlikely to comply with the order, it may permanently close the tank.

(6) This section does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

History: En. Sec. 8, Ch. 112, L. 1997; amd. Sec. 14, Ch. 506, L. 1999; amd. Sec. 2, Ch. 51, L. 2007.

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.
Judicial review of contested cases, Title 2, ch. 4, part 7.
Contempts, Title 3, ch. 1, part 5.

75-11-513. Injunctions. The department may institute and maintain, in the name of the state, actions for injunctive relief as provided in Title 27, chapter 19, to:

(1) immediately restrain any person from engaging in any unauthorized activity that is endangering or causing damage to the public health or to the environment;

(2) enjoin a violation of this part, a rule adopted under this part, or an order of the department or the board; or

(3) require compliance with this part, a rule adopted under this part, or an order of the department or the board.

History: En. Sec. 9, Ch. 112, L. 1997.

Cross-References

Injunctions — Supreme Court jurisdiction, 3-2-205.

75-11-514. Imminent hazard. Upon receipt of evidence that the storage or disposal of any regulated substance may present an imminent and substantial danger to the public health or to the environment, the department may commence legal proceedings to immediately restrain or enjoin any person who has contributed to or who is contributing to the storage or disposal from engaging in these activities or order the person to take other action as may be necessary, or both. The department may also take appropriate action as may be necessary under this section, including issuing orders necessary or appropriate to protect the public health and the environment.

History: En. Sec. 10, Ch. 112, L. 1997.

Cross-References

Injunctions, Title 27, ch. 19.

75-11-515. Cleanup orders. The department may issue a cleanup order to any person who has discharged, deposited, or spilled any regulated substance into or onto any land or

water in an unlawful or unapproved manner or who has discharged, deposited, or spilled any regulated substance into or onto any land or water so as to result in unlawful or unapproved disposal of a regulated substance. The order must direct the person to clean up and remove the regulated substance, to treat the regulated substance, or to take other actions as may be considered reasonable by the department.

History: En. Sec. 11, Ch. 112, L. 1997.

75-11-516. Civil penalties. (1) (a) A person who violates any provision of this part, a rule adopted under this part, or an order of the department or the board is subject to a civil penalty not to exceed $10,000 for each violation. Each day of violation constitutes a separate violation.

(b) Penalties assessed under this subsection (1) must be determined in accordance with the penalty factors in 75-1-1001.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty. Penalties are also recoverable in an action brought by the department. The action must be brought in the district court of the county in which the violation occurred.

(3) Action under this section does not bar enforcement of this part, rules adopted under this part, or orders of the department or the board.

(4) Money collected under this section must be deposited in the state general fund.

History: En. Sec. 12, Ch. 112, L. 1997; amd. Sec. 20, Ch. 487, L. 2005; amd. Sec. 41, Ch. 535, L. 2021.

Cross-References

Duties of County Attorney related to state matters, 7-4-2716.
Injunctions, Title 27, ch. 19.

75-11-517. Lien. (1) The costs incurred by the department to close an underground storage tank pursuant to 75-11-504 or 75-11-512 constitute a lien in favor of the state upon all property and rights to the property that belong to the owner or operator.

(2) The lien imposed by this section arises at the time that notice incorporating a description of the property on which the underground storage tank was permanently closed and an identification of the amount of costs is filed with the clerk and recorder of the county in which the real property is located. A copy of the notice must be served by certified mail upon the property owner.

(3) The costs constituting the lien may be recovered in an action in the district court for the district in which the property is located. This section does not affect the right of the state to bring an action against a person to recover all costs for which that person is liable under this part or any other provision of state or federal law.

(4) The lien must continue until the liability for the costs incurred as a result of the permanent closure of the underground storage tank by the state is satisfied.

(5) Payment of any liens under this section must be deposited in the account from which the costs incurred by the state originated.

History: En. Sec. 11, Ch. 506, L. 1999.

Cross-References

Liens, Title 71, ch. 3.

75-11-518. Venue for legal actions. All legal actions affecting underground storage tanks or the disposal of regulated substances must be brought in the county in which the underground storage tank is located.

History: En. Sec. 14, Ch. 112, L. 1997; amd. Sec. 42, Ch. 535, L. 2021.

75-11-519. Liability — defense and exclusions. (1) A person has a defense against liability in a tort action for damages suffered as a result of an act or omission that constitutes a violation of this part, a rule adopted under this part, or a condition of a permit or authorization required by a rule adopted under this part if the person can establish by a preponderance of the evidence that:

(a) the person is a government entity that acquired ownership or control through bankruptcy, tax delinquency, abandonment, or lien foreclosure in which the government entity acquired title by virtue of the government entity's authority;

(b) the person has not caused or contributed to the violation; and

(c) the person is making an effort to abate the violation.

(2) For the purposes of this part, "government entity" includes a consolidated city-county, a county, and an incorporated city or town.

History: En. Sec. 5, Ch. 159, L. 2013.

75-11-520. Construction in event of conflict. The provisions of this part and rules promulgated pursuant to this part govern if they conflict with other provisions of Montana law or any action taken by the department under those provisions.

History: En. Sec. 15, Ch. 112, L. 1997.

75-11-521. Benchmarks — budget action taken if not met. (1) Categorizing petroleum storage tank release sites as resolved is a higher priority than investigation of new releases unless the new release is an imminent danger to the health and safety of the public.

(2) The department shall develop a list of open release sites prioritized by danger to the health and safety of the public and anticipated date of categorizing the sites as resolved.

(3) (a) The cumulative benchmarks that are provided in subsection (3)(b) must be met. If the benchmarks are not met, money appropriated for petroleum storage tank leak prevention may not be included in the department's base budget, as defined in 17-7-102, for the current biennium.

(b) The cumulative benchmarks are as follows:

Date	Total Number of Resolved Sites
December 31, 2011	45
July 1, 2012	90
December 31, 2012	135
July 1, 2013	180
December 31, 2013	225
July 1, 2014	270
December 31, 2014	315
July 1, 2015	360

(4) As used in this section, the following definitions apply:

(a) "Petroleum storage tank" has the same meaning as prescribed in 75-11-302.

(b) "Release" has the same meaning as prescribed in 75-11-302.

(c) "Resolved" means a determination by the department that all cleanup requirements have been met and that conditions at the site ensure present and long-term protection of human health, safety, and the environment.

History: En. Sec. 4, Ch. 394, L. 2011; amd. Sec. 104, Ch. 261, L. 2021.

75-11-522 through 75-11-524 reserved.

75-11-525. Administrative penalties for violations — appeals — venue. (1) (a) A person who violates any of the provisions of this part or any rules promulgated under the authority of this part may be assessed and ordered by the department to pay an administrative penalty not to exceed $500 for each violation. This limitation on administrative penalties applies only to penalties assessed under this section. Each occurrence of the violation and each day that it remains uncorrected constitutes a separate violation. The department may suspend a portion of the administrative penalty assessed under this section if the condition that caused the assessment of the penalty is corrected within a specified time. Assessment of an administrative penalty under this section may be made in conjunction with any order or other administrative action authorized by this chapter.

(b) Penalties assessed under this subsection (1) must be determined in accordance with the penalty factors in 75-1-1001.

(2) When the department assesses an administrative penalty under this section, it must have written notice served personally or by certified mail on the alleged violator or the violator's agent. For purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:

(a) the provision alleged to be violated;

(b) the facts alleged to constitute the violation;

(c) the amount of the administrative penalty assessed under this section;

(d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused the assessment of the penalty;

(e) the nature of any corrective action that the department requires, whether or not a portion of the penalty is to be suspended;

(f) as applicable, the time within which the corrective action is to be taken and the time within which the administrative penalty is to be paid; and

(g) the right to appeal or to a hearing to mitigate the penalty assessed.

(3) A person assessed a penalty under this section may request a hearing before the board to either contest the alleged violation or request mitigation of the penalty. The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing conducted under this section. If a hearing is held under this section, it must be held in the county in which the alleged violation occurred.

(4) If the department is unable to collect an administrative penalty assessed under this section or if a person fails to pay all or any portion of an administrative penalty assessed under this section, the department may take action in district court to recover the penalty amount and any additional amounts assessed or sought under this chapter. The action must be brought in the district court of the county in which the violation occurred.

(5) Action under this section does not bar action under this chapter or any other remedy available to the department for violations of underground storage tank laws or rules promulgated under those laws.

(6) Administrative penalties collected under this section must be deposited in the state general fund.

History: En. Sec. 3, Ch. 281, L. 1993; amd. Sec. 29, Ch. 112, L. 1997; Sec. 75-10-423, MCA 1995; redes. 75-11-525 by Sec. 36(2), Ch. 112, L. 1997; amd. Sec. 21, Ch. 487, L. 2005; amd. Sec. 3, Ch. 51, L. 2007; amd. Sec. 43, Ch. 535, L. 2021.

Cross-References

Judicial review of contested cases, Title 2, ch. 4, part 7.

75-11-526. Underground storage tank special revenue account. (1) There is an underground storage tank account within the state special revenue fund established in 17-2-102. There must be paid into the account:

(a) revenues from underground storage tank permit and notification fees; and

(b) corrective action costs, damages, and penalties recovered under section 9003 of the federal Resource Conservation and Recovery Act of 1976, as amended.

(2) Appropriations may be made from the underground storage tank account for the following purposes only:

(a) state and local government costs of implementing the underground storage tank leak prevention program;

(b) state and local government costs relating to the investigation of leaking underground storage tanks; or

(c) state costs relating to the administration of the administrative penalty program.

History: En. Sec. 10, Ch. 384, L. 1989; amd. Sec. 4, Ch. 281, L. 1993; Sec. 75-10-447, MCA 1995; redes. 75-11-526 by Sec. 36(2), Ch. 112, L. 1997.

Part 6
Contaminated Property Compensation and Restoration

75-11-601. Short title — scope. (1) This part may be cited as the "Montana Contaminated Property Compensation and Restoration Act".

(2) This part applies only to common law claims brought in judicial proceedings on behalf of private interests of individuals or entities.

History: En. Sec. 1, Ch. 409, L. 2009.

75-11-602. Definitions. For purposes of this part, the following definitions apply:

(1) "Department" means the department of environmental quality provided for in 2-15-3501.

(2) (a) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum or petroleum products from a petroleum storage tank into ground water, surface water, surface soils, or subsurface soils that occurred from a petroleum storage tank, as defined in 75-11-302.

(b) The term does not include a release from the following petroleum storage tanks:

(i) a tank located at a refinery or a terminal of a refiner;

(ii) a tank located at an oil and gas production facility; or

(iii) a tank that is or was previously under the ownership or control of a railroad, except for a tank that was operated by a lessee of a railroad in the course of nonrailroad operations.

(3) "Restoration damages" means the amount of compensation determined necessary by a trier of fact to restore a contaminated special use property to its function and use prior to the contamination upon which a common law claim is based. The term includes reasonable attorney fees and costs incurred by the plaintiff.

(4) "Special use property" means real property contaminated by a release from a petroleum storage tank, as defined in 75-11-302, that is found by a trier of fact to have personal value to the plaintiff not reflected in the market value of the property or to have unique public, historic, cultural, or religious value not reflected in the market value of the property.

History: En. Sec. 2, Ch. 409, L. 2009.

75-11-603. Restoration damages for contamination of special use property. (1) Restoration damages for a common law claim alleging contamination of special use property may be granted by the trier of fact and may only be obtained pursuant to this part.

(2) Nothing in this section precludes the award of other damages allowed under common law and statute.

History: En. Sec. 3, Ch. 409, L. 2009.

75-11-604. Use of restoration damages — request for trust account. (1) Restoration damages awarded pursuant to 75-11-603, exclusive of damages awarded for attorney fees and costs, must be used to conduct any remedial and corrective action necessary to restore the special use property for which the damages were awarded to its function and use prior to the contamination for which the damages were awarded.

(2) Any party may request that a court awarding restoration damages may also order that those damages be deposited in a segregated trust account at a commercial bank or trust company to ensure compliance with subsection (1). The plaintiff may create a trust to be overseen by a qualified professional to restore the special use property.

History: En. Sec. 4, Ch. 409, L. 2009.

75-11-605. Burden of proof. The plaintiff in an action for restoration damages resulting from the contamination of special use property has the burden of proof to show that a property meets the definition of a special use property.

History: En. Sec. 5, Ch. 409, L. 2009.

Part 7
Montana Brownfields Revitalization Act

Part Compiler's Comments

Effective Date: This part is effective October 1, 2025.

75-11-701. Short title. This part may be cited as the "Montana Brownfields Revitalization Act".

History: En. Sec. 1, Ch. 475, L. 2025.

75-11-702. Findings and intent — purposes. The legislature finds that:

(1) real properties exist across the state where the stigma of hazardous substance and petroleum contamination hinders the development or best use of the property. These properties may be eligible for brownfields funding.

(2) the assessment and cleanup of hazardous substance and petroleum brownfields sites should be encouraged and facilitated to reduce threats to human health and the environment, prepare properties for reuse and redevelopment, and return property to the local tax rolls;

(3) the petroleum tank release cleanup fund established in 75-11-313 does not immediately address all petroleum tank release sites in Montana;

(4) not all sites impacted by hazardous substances are assessed or cleaned up by the Comprehensive Environmental Cleanup and Responsibility Act in chapter 10, part 7, of this title or the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.

History: En. Sec. 2, Ch. 475, L. 2025.

75-11-703. Definitions. (1) The definitions used in this part are for the purpose of determining the eligibility of sites to receive and expend federal brownfields funding received by a grant recipient from the United States environmental protection agency under the federal Brownfields Revitalization and Environmental Restoration Act of 2001, Title II of Public Law 107-118.

(2) As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(a) "Brownfield site" means an abandoned, idle, blighted, or underutilized property, for which the expansion, redevelopment, or reuse of may be complicated by the presence or potential presence of hazardous substances, pollutants, or contaminants.

(b) "Brownfields redevelopment" means any work or undertaking by a person to acquire a brownfield site and to raze, demolish, remove, reconstruct, renovate, or rehabilitate the site or existing buildings, structures, or other improvements at the site for the purpose of promoting the use of the site for residential, commercial, industrial, or other purposes. The term does not include construction of new facilities on the site for any purpose other than environmental remediation activities.

(c) "Department" means the department of environmental quality provided for in 2-15-3501.

(d) "Eligible entity" means a city, town, county, consolidated city-county, tribal government, economic development organization, nonprofit organization, or state agency that has received federal brownfields funding from the environmental protection agency or other state agency.

(e) "Environmental remediation activities" means:

(i) investigation, analysis, and monitoring of a brownfields site to determine the existence and extent of actual or potential environmental pollution;

(ii) redevelopment planning; or

(iii) abatement, removal, or containment of environmental pollution at a brownfields site.

(f) "Hazardous substance" has the same meaning as provided in 75-10-602.

(g) "Petroleum" or "petroleum product" has the same meaning as provided in 75-11-302.

(h) "Petroleum tank release site" means a site where there has been a release from a petroleum storage tank and assessment or remediation, or both, are being pursued in accordance with Title 75, chapter 11, part 3.

(i) "Reasonable steps" means, as appropriate, stopping continuing releases, preventing threatened future releases, or preventing or limiting human, environmental, or natural resource exposure to previous petroleum, petroleum product, or hazardous substance releases. The term may include limiting access to the property, monitoring known contaminants, and complying with state, local, or both state and local requirements.

(j) "Responsible party" means:

(i) a person responsible for conducting the assessment, investigation, and cleanup at a brownfield site as determined through:

(A) a judgment rendered in a court of law or an administrative order;

(B) an enforcement action by federal authorities or the department; or

(C) a citizen suit, contribution action, or other third-party claim brought against the current owner of a brownfield site; or

(ii) a current owner of a brownfield site who:

(A) dispensed or disposed of petroleum or petroleum product or hazardous substance contamination at the site;

(B) exacerbated existing contamination at the site;

(C) owned the site when any dispensing or disposal of petroleum or hazardous substances by others took place; or

(D) failed to take reasonable steps with regard to contamination at the site.

(k) "Viable responsible party" means a responsible party determined by the department to have the financial capability to conduct environmental remediation activities at a brownfield site.

History: En. Sec. 3, Ch. 475, L. 2025.

75-11-704. Viability at a petroleum release site. (1) For the purpose of determining the viability of a responsible party at a brownfield site where petroleum contamination is the predominant contaminant, the department shall presume that:

(a) ongoing businesses or companies and government entities are viable unless there is information suggesting that the presumption is not appropriate, and the department determines the information is sufficient to rebut the presumption in a particular case; and

(b) individuals and defunct or insolvent companies are not viable unless there is information suggesting that the presumption is not appropriate, and the department determines the information is sufficient to rebut the presumption in a particular case.

(2) The department may not determine that a responsible party is viable based solely on the fact that the owner or operator of a petroleum tank release site is eligible to be reimbursed by the petroleum tank release compensation board established in 2-15-2108 from the petroleum tank release cleanup fund established in 75-11-313.

(3) It is an applicant's responsibility to provide the department with sufficient financial information about a responsible party identified in a petroleum brownfields site eligibility application to determine whether the responsible party is a viable responsible party.

History: En. Sec. 4, Ch. 475, L. 2025.

75-11-705. Eligibility for brownfields funding — determination and limitations. (1) Before an eligible entity may expend federal brownfields funds at a brownfield site, either the United States environmental protection agency or the department shall make a written determination that:

(a) there is no viable responsible party for the contamination as determined pursuant to 75-11-704;

(b) the brownfield site will not be assessed, investigated, or cleaned up by a responsible party; and

(c) the brownfield site is not subject to an order under section 9003(h) of the federal Solid Waste Disposal Act, 42 U.S.C. 6991b(h), or Title 75, chapter 11.

(2) After the department or the United States environmental protection agency determines that a brownfield site is eligible for federal brownfields funding, the department shall encourage and may not limit the use of an eligible entity's federal brownfields funding at the site even if the site owner or operator, as defined in 75-11-302, is eligible for funding from the petroleum tank release cleanup fund established in 75-11-313.

(3) The department may not limit the use of money from the petroleum tank release cleanup fund established in 75-11-313 when used as a commitment to a federal brownfields loan to an eligible entity for remediation of petroleum at a brownfield site.

(4) (a) Except as provided in subsection (4)(b), a determination made by the department or the United States environmental protection agency that a brownfield site is eligible for federal brownfields funding does not limit or alter the responsible party's, owner's, or operator's responsibility to assess or remediate:

(i) a petroleum or hazardous substance release in accordance with Title 75, chapter 11; or

(ii) a liability at a facility subject to the Comprehensive Environmental Cleanup and Responsibility Act in accordance with Title 75, chapter 10.

(b) The department shall approve a comprehensive remediation plan and allow for the use of federal brownfields funding at the brownfield site if the department determines that an eligible entity has proposed to conduct timely and comprehensive environmental remediation activities using federal brownfields funding at a brownfield site that:

(i) is eligible for brownfield funding as determined by the department or U.S. environmental protection agency;

(ii) proposes a remediation plan of environmental remediation activities that meets or exceeds department remediation standards; and

(iii) meets or exceeds financial commitments required by the petroleum tank release compensation board pursuant to Title 75, chapter 11, part 3.

History: En. Sec. 5, Ch. 475, L. 2025.

75-11-706. Site access. Upon presentation of the proper credentials, an authorized representative of the department may enter any building, property, premises, place, or facility where brownfield redevelopment or environmental remediation activities are being performed or have been performed for the purpose of making an inspection to ensure compliance by any person pursuant to the provisions of this part or rules promulgated pursuant to this part.

History: En. Sec. 6, Ch. 475, L. 2025.

75-11-707. Rulemaking authority. The department may adopt rules to implement the provisions of this part and to:

(1) prescribe the form and content of applications for assistance from the brownfields site redevelopment fund;

(2) apply eligibility criteria for awarding assistance from the brownfields site redevelopment fund;

(3) establish additional terms and conditions for assistance from the brownfields site redevelopment fund;

(4) establish maximum amounts for an individual award of assistance from the brownfields site redevelopment fund, if considered appropriate and necessary for the successful administration of the program;

(5) ensure compliance of the program with the provisions of the Small Business Liability Relief and Brownfields Revitalization Act, Public Law 107-118, and rules promulgated under the act unless these matters are specifically governed by 75-11-708; and

(6) maintain the financial integrity of the program.

History: En. Sec. 7, Ch. 475, L. 2025.

75-11-708. Brownfields site redevelopment fund — statutory appropriation. (1) It is the intent of the brownfield program to strengthen communities throughout this state and to promote economic development by encouraging environmental remediation activities and brownfields redevelopment of properties blighted by real or perceived contamination.

(2) The brownfields site redevelopment fund is an account in the state special revenue fund for assessment and cleanup of brownfield sites.

(3) The money in the account:

(a) may be deposited through an allocation of money.

(b) must be deposited through money received by the department in the form of legislative appropriations, reimbursements, gifts, or donations from any source that is intended to be used for the purposes of this account.

(4) The money in the account is statutorily appropriated, as provided in 17-7-502, to the department to be used only for:

(a) investigation and cleanup of petroleum or hazardous substances on an eligible site or facility for the purposes of brownfields redevelopment;

(b) demolition of structures, buildings, or other improvements located on an eligible site or facility;

(c) interior contaminant abatement activities on an eligible site or facility for asbestos abatement activities, as described in 75-2-502, or lead-based paint abatement activities as described in 40 CFR, part 745, subpart E; or

(d) removal of underground tank systems.

(5) Any unspent or unencumbered money in the account at the end of a fiscal year must remain in the account.

(6) Interest income on the account must deposited and remain in the account.

History: En. Sec. 8, Ch. 475, L. 2025.

CHAPTERS 12 THROUGH 14
RESERVED

CHAPTER 15
LANDSCAPE MANAGEMENT

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75-15-223. Authority to acquire interest in land for screening and removal of junkyards, motor vehicle graveyards, motor vehicle wrecking facilities, garbage dumps, and sanitary landfills.

Chapter Cross-References

City-County Planning Boards, Title 76, ch. 1, part 1.
Planning and zoning, Title 76, ch. 2.

Part 1
Outdoor Advertising

Part Cross-References

Beauty of state, Preamble, Mont. Const.
Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.

75-15-101. Short title. This part may be cited as the "Outdoor Advertising Act".

History: En. Sec. 1, Ch. 2, 2nd Ex. L. 1971; R.C.M. 1947, 32-4715(b).

75-15-102. Policy. The legislature finds and declares that in order to promote the safety, convenience, and enjoyment of travel on and protection of the public investment in highways within this state and to preserve and enhance the natural scenic beauty or aesthetic features of the highways and adjacent areas, it shall be the policy of this state that the erection and maintenance of outdoor advertising in areas adjacent to the right-of-way of the interstate and primary systems within this state shall be regulated in accordance with the terms of this part and the rules promulgated by the commission pursuant thereto. It is the intention of the legislature in this part to provide a statutory basis for regulation of outdoor advertising consistent with the public policy relating to areas adjacent to the interstate and primary systems declared by congress in Title 23, United States Code, "Highways".

History: En. Sec. 1, Ch. 2, 2nd Ex. L. 1971; R.C.M. 1947, 32-4715(a).

75-15-103. Definitions. As used in this part, the following definitions apply:

(1) "Commercial or industrial activities" means those activities generally recognized as commercial or industrial by zoning authorities in this state, except that none of the following activities are considered commercial or industrial:

(a) agricultural, forestry, grazing, farming, and related activities, including wayside fresh produce stands;

(b) transient or temporary activities;

(c) activities not visible from the main-traveled way;

(d) activities conducted in a building principally used as a residence;

(e) railroad tracks and minor sidings;

(f) activities more than 660 feet from the nearest edge of the right-of-way.

(2) "Commercial or industrial zone" means an area that is used or reserved for business, commerce, or trade pursuant to comprehensive local zoning ordinances, regulations, or enabling state legislation, including highway service areas lawfully zoned as highway service zones, where the primary use of the land is or is reserved for commercial and roadside services, other than outdoor advertising, to serve the traveling public. Areas temporarily zoned as commercial or industrial by an interim zoning district or interim regulation adopted as an emergency measure pursuant to 76-2-206 are not covered by this definition.

(3) "Commission" means the transportation commission of Montana.

(4) "Department" means the department of transportation.

(5) "Information center" means an area or site established or maintained at safety rest areas for the purpose of informing the public of places of interest within the state and providing other information that the commission may consider desirable.

(6) "Interchange" or "intersection" means those areas and their approaches where traffic is channeled off or onto an interstate route, including the deceleration lanes or acceleration lanes from or to another federal, state, county, city, or other route.

(7) "Interstate system" means that portion of the national system of interstate and defense highways located within this state as officially designated or as may be designated by the commission and approved by the secretary pursuant to the provisions of Title 23, United States Code, "Highways".

(8) "Maintain" means to allow to exist, subject to the provisions of this part.

(9) "Maintenance" means to repair, refurbish, repaint, or otherwise keep an existing sign structure in a state suitable for use.

(10) "Outdoor advertising" means any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard, or other structure that is designed, intended, or used to advertise or inform and that is visible from any place on the main-traveled way of the interstate or primary systems.

(11) "Primary system" means that portion of connected main highways as officially designated or as may be designated by the commission and approved by the secretary pursuant to the provisions of Title 23, United States Code, "Highways".

(12) "Safety rest area" means an area or site established and maintained within or adjacent to the right-of-way, by or under public supervision or control, for the convenience of the traveling public.

(13) "Secretary" means the secretary of the United States department of transportation.

(14) "Unzoned commercial or industrial area" means an area not zoned by state or local law, regulation, or ordinance that is occupied by one or more commercial or industrial activities, other than outdoor advertising, on the lands along the highway for a distance of 600 feet immediately adjacent to the activities.

(15) "Urban area" means an urbanized area or place, as designated by the United States bureau of the census, that has a population of 5,000 or more and that is within boundaries fixed by the department. The boundaries must at a minimum encompass the entire urban place designated by the bureau of the census.

(16) "Visible" means capable of being seen and legible without visual aid by a person of normal visual acuity.

History: (1) thru (3), (5) thru (16)En. Sec. 2, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 89, L. 1974; amd. Sec. 1, Ch. 216, L. 1975; (4)En. by Code Commissioner, 1979; R.C.M. 1947, 32-4716; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 6, Ch. 75, L. 1995; amd. Sec. 1, Ch. 510, L. 1995; amd. Sec. 38, Ch. 19, L. 2011.

Cross-References

General provisions — Transportation Commission, Title 60, ch. 2, part 1.

General provisions — Department of Transportation, Title 60, ch. 2, part 2.

75-15-104. More restrictive regulations preserved. Nothing in this part shall be construed to abrogate or affect the provisions of any lawful ordinance, regulation, or resolution which is more restrictive than the provisions of this part.

History: En. Sec. 11, Ch. 2, 2nd Ex. L. 1971; R.C.M. 1947, 32-4725.

75-15-105. Relaxation of regulations if federal law changed. In the event the general requirements of Title 23, United States Code, "Highways", or existing rules and regulations of the United States department of transportation become amended or changed to less restrictive conditions than presently exist, then the commission shall amend or change the rules that it may have adopted to come into conformity with the federal law, rule, and regulation.

History: En. Sec. 12, Ch. 2, 2nd Ex. L. 1971; R.C.M. 1947, 32-4726; amd. Sec. 2, Ch. 510, L. 1995.

75-15-106 through 75-15-110 reserved.

75-15-111. Outdoor advertising prohibited in proximity to highway — exceptions. (1) Outdoor advertising may not be erected or maintained that is within 660 feet of the nearest edge of the right-of-way and that is visible from any place on the main-traveled way of an interstate or primary system, except:

(a) directional and other official signs and notices, which signs and notices include but are not limited to signs and notices pertaining to natural wonders and scenic and historical attractions, as authorized or required by law;

(b) signs, displays, and devices advertising the sale or lease of property upon which they are located;

(c) signs, displays, and devices advertising activities conducted on the property upon which they are located;

(d) signs, displays, and devices located in areas that are zoned industrial or commercial by a bona fide state, county, or local zoning authority;

(e) signs, displays, and devices located in unzoned commercial or industrial areas, which areas must be determined from actual land uses and by agreement between the department and the secretary and defined by rules adopted by the commission. The exception granted by this subsection is limited to two signs and may not apply to signs, displays, and devices located within an unzoned area in which the commercial or industrial activity used in defining the area has ceased for a period of 9 months.

(f) signs or displays advertising the cultural exhibits of nonprofit historical or arts organizations if the signs or displays conform with the standards provided in Title 23, Code of Federal Regulations, section 750, subpart B; or

(g) signs that are consistent with the policy of this state and with the national policy set forth in 23 U.S.C. 131 and the regulations promulgated under 23 U.S.C. 131 and that are designed to provide information in the specific interest of the traveling public as provided in 60-5-504, 60-5-505, 60-5-511 through 60-5-513, and 60-5-519 through 60-5-521.

(2) Outdoor advertising authorized under subsections (1)(a), (1)(d), and (1)(e) must conform with standards contained in and must bear permits required in rules that are adopted by the commission and this part.

(3) Outdoor advertising may not be erected or maintained beyond 660 feet of the nearest edge of the right-of-way of an interstate or primary highway outside of an urban area if the outdoor advertising is or was erected with the purpose of its message being read from the main-traveled way and visible from the main-traveled way unless the outdoor advertising meets the criteria of subsections (1)(a), (1)(b), or (1)(c). If the outdoor advertising meets that criteria, it must conform with standards contained in rules that are adopted by the commission and with this part.

(4) An outdoor advertising structure in an unzoned commercial or industrial area that is lawfully in existence on April 21, 1995, that meets the size requirements in 75-15-113, but that exceeds the restrictions in subsection (1)(e) of this section:

(a) must be classified as nonconforming by the department;

(b) may not be increased in size;

(c) may be maintained each year if the value of the materials used in the maintenance does not exceed 75% of the value of all of the materials required to replace the sign new; and

(d) may be replaced, if damaged, at up to and including 100% of its replacement cost.

History: En. Sec. 3, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 160, Ch. 316, L. 1974; amd. Sec. 2, Ch. 216, L. 1975; R.C.M. 1947, 32-4717; amd. Sec. 1, Ch. 497, L. 1981; amd. Sec. 19, Ch. 537, L. 1989; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 3, Ch. 510, L. 1995.

Cross-References

Information signs, Title 60, ch. 5, part 5.

75-15-112. Unlawful advertising. Outdoor advertising is unlawful:

(1) when erected after June 24, 1971, contrary to this part or erected after June 24, 1971, beyond 660 feet of the nearest edge of the right-of-way of an interstate or primary highway outside of an urban area with the purpose of its message being read from such main-traveled way and visible from such main-traveled way, unless such outdoor advertising meets the criteria of subsections (a), (b), or (c) of 75-15-111(1);

(2) when a permit is not obtained as prescribed in this part; or

(3) when a permittee fails to comply with a notice of violation as provided in 75-15-132.

History: En. Sec. 8, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 3, Ch. 89, L. 1974; amd. Sec. 165, Ch. 316, L. 1974; amd. Sec. 5, Ch. 216, L. 1975; amd. Sec. 4, Ch. 234, L. 1977; R.C.M. 1947, 32-4722(1).

75-15-113. Standards for permitted advertising. Except for outdoor advertising beyond 660 feet of the nearest edge of the right-of-way of an interstate or primary highway outside of an urban area, outdoor advertising permitted under 75-15-111(1)(d) and (1)(e) must conform to the following requirements:

(1) Signs may not be erected or maintained that exceed 672 square feet in area, including border and trim but excluding base or apron, supports, and other structural members.

(2) Signs may not exceed 48 feet in length.

(3) The maximum height of the sign structure, including the sign face, is 30 feet, measured at a right angle from the surface of the roadway at the centerline of the interstate or primary highway.

(4) No more than two facings visible and readable from the same direction on the main-traveled way may be erected on any one sign structure. Whenever two facings are so positioned, neither may exceed 325 square feet.

(5) Double-faced, back-to-back, and V-type signs are considered to be a single sign or structure.

(6) When two or more faces, back to back, are supported by separate structures, each is considered to be a single sign.

(7) No two signs may be spaced less than 500 feet apart adjacent to an interstate highway or limited-access primary highway, except that signs may be erected closer than 500 feet if they are separated by buildings or other obstructions in a manner that only one sign facing located within the 500-foot spacing distance is visible from the highway at any one time.

(8) Signs may not be located within 500 feet of any of the following that are adjacent to the highway unless the signs are in an incorporated area:

(a) public parks;

(b) public forests;

(c) public playgrounds;

(d) scenic areas designated as such by the department or other state agency having and exercising this authority;

(e) cemeteries.

(9) A sign may not be located on an interstate highway or freeway within 500 feet of an interchange or intersection at a grade or rest area. The 500 feet is to be measured along the interstate or freeway from the beginning or ending of the pavement widening at the exit from or entrance to the main-traveled way.

(10) Signs may be illuminated, subject to the following restrictions:

(a) Signs that contain, include, or are illuminated by a flashing, intermittent, or moving light or lights are prohibited, except those giving public service information such as time, date, temperature, weather, or similar information.

(b) Signs that are not effectively shielded as to prevent beams or rays of light from being directed at a portion of the traveled ways of the interstate or federal-aid primary highway, that are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or that otherwise interfere with a driver's operation of a motor vehicle are prohibited.

(c) A sign may not be so illuminated that it interferes with the effectiveness of or obscures an official traffic sign, device, or signal.

(11) The location of sign structures situated on the primary highways between streets, roads, or highways entering or intersecting the main-traveled way must conform to the following minimum spacing criteria:

(a) When the distance between centerlines of intersecting streets or highways is less than 1,000 feet, a minimum spacing between structures of 150 feet may be permitted between the intersecting streets or highways.

(b) When the distance between centerlines of intersecting streets or highways is 1,000 feet or more, minimum spacing between sign structures must be 300 feet.

History: En. Sec. 5, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 2, Ch. 89, L. 1974; amd. Sec. 162, Ch. 316, L. 1974; amd. Sec. 3, Ch. 216, L. 1975; R.C.M. 1947, 32-4719; amd. Sec. 1, Ch. 45, L. 1979; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 4, Ch. 510, L. 1995.

75-15-114 through 75-15-120 reserved.

75-15-121. Commission rules authorized. The commission may adopt rules to control the erection and maintenance of outdoor advertising along the interstate and primary highway systems in conformance with the terms of this part and in conformity with 23 U.S.C. 131, as amended.

History: En. Sec. 4, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 161, Ch. 316, L. 1974; R.C.M. 1947, 32-4718.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

75-15-122. Permits required — identification tags — preexisting structures — fees. (1) (a) A sign authorized by 75-15-111(1)(a), (1)(d), and (1)(e) may not be constructed or maintained without a permit. Applications for permits must be made to the department on forms furnished by it. The department shall require reasonable information to be furnished, including a statement that the owner or occupant of the land has consented to the erection or maintenance of the sign on the land. A permit must be obtained for each sign, and the application for the permit must be accompanied by a nonrefundable, initial fee.

(b) Permits must be issued for 3 years, assigned a permit number, and renewed every 3 years after issuance upon payment of a fee without the filing of a new application. All fees received must be paid into the highway account in the state special revenue fund.

(c) The fees described in subsections (1)(a) and (1)(b) are to be determined by the square footage of the sign face and established, by rule, by the commission to cover the costs of administering and enforcing this section.

(2) The department shall issue with each new permit a permanent identification tag not larger than 36 square inches that must be affixed to the sign in a position readily visible from the highway.

(3) Notwithstanding the foregoing provisions of this section, the department shall issue permits and identification tags upon application and payment of the requisite fee for a structure lawfully in existence on June 23, 1971, and the permits must be renewed for a period of time as is prescribed in this section unless the structure is removed for improper maintenance.

(4) Notwithstanding the foregoing provisions of this section, the department shall issue permits and identification tags upon application and payment of the requisite fee for outdoor advertising lawfully in existence on June 23, 1971, and made nonconforming by virtue of 75-15-111(3), and the permits must be renewed for a period of time as is prescribed in this section unless the structure is removed for improper maintenance.

History: En. Sec. 6, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 163, Ch. 316, L. 1974; amd. Sec. 1, Ch. 22, L. 1975; amd. Sec. 4, Ch. 216, L. 1975; R.C.M. 1947, 32-4720; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 5, Ch. 510, L. 1995.

75-15-123. Acquisition of outdoor advertising rights — compensation. (1) The department may acquire by gift, purchase, agreement, exchange, or eminent domain existing

outdoor advertising and property rights pertaining to advertising that was lawfully in existence on June 24, 1971, and that by virtue of 75-15-111(1) is nonconforming. Eminent domain must be exercised in accordance with Title 70, chapter 30.

(2) Just compensation must be paid for outdoor advertising and property rights pertaining to the advertising acquired through the process of eminent domain. The department may remove outdoor advertising found to be in violation of 75-15-112 or 75-15-132 without payment of compensation.

(3) Except as provided in 75-15-131 and 75-15-132, a sign may not be required to be removed unless at the time of removal or discontinuance there are sufficient funds, from whatever source, appropriated and immediately available to pay the just compensation required under this section and unless at that time the federal funds required to be contributed under 23 U.S.C. 131(g), with respect to the outdoor advertising being removed, have been apportioned and are immediately available to this state.

History: En. Sec. 9, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 166, Ch. 316, L. 1974; amd. Sec. 6, Ch. 216, L. 1975; R.C.M. 1947, 32-4723(part); amd. Sec. 14, Ch. 68, L. 1979; amd. Sec. 90, Ch. 125, L. 2001.

Cross-References

Acquisition of property by eminent domain, 70-30-103.

75-15-124. Agreements with secretary establishing specifications for advertising. The department may enter into an agreement with the secretary regarding the size, lighting, and spacing of outdoor advertising, as provided in this part, which may be erected and maintained within the areas adjacent to the interstate and primary highway system which are zoned commercial, industrial, or in such other unzoned commercial or industrial areas as may be determined by agreement and as provided in this part.

History: En. Sec. 10, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 167, Ch. 316, L. 1974; R.C.M. 1947, 32-4724.

75-15-125 through 75-15-130 reserved.

75-15-131. Entry to inspect — notice of unlawful advertising — remedial action. (1) The department may enter upon lands bearing outdoor advertising and make examination of such advertising.

(2) The department shall give notice in writing, either by certified mail or by personal service, to the owner or occupant of the land on which advertising believed to be unlawful is located and to the owner of the outdoor advertising structure if the latter is known or, if unknown, by posting notice in a conspicuous place on the structure of its intention to remove the unlawful advertising. Within 45 days after the notice, the owner of the land or of the structure may make a written request for a hearing before the commission to show cause why the structure should not be removed.

(3) If a hearing before the commission is not requested or if there is no appeal taken from the commission's decision at the hearing or if the commission's decision is affirmed on appeal, the department shall immediately remove or cause to be removed the unlawful outdoor advertising. The department may, upon final determination by the commission that an item of outdoor advertising is unlawful, enter upon lands bearing such advertising and remove the unlawful advertising.

(4) The owner of the structure and the owner or occupant of the land are jointly and severally liable for the costs of the removal.

History: En. Sec. 8, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 3, Ch. 89, L. 1974; amd. Sec. 165, Ch. 316, L. 1974; amd. Sec. 5, Ch. 216, L. 1975; amd. Sec. 4, Ch. 234, L. 1977; R.C.M. 1947, 32-4722(2), (3).

Cross-References

Joint and several liability, 27-1-703.

75-15-132. False application or disrepair of structure — remedial action. When the department determines that a willful false or misleading statement has been made in the application for a permit or that the structure for which a permit was issued is not in a reasonable state of repair or is unsafe, the department shall notify the holder of the permit in writing, either by certified mail or by personal service, of the violation and specify that remedial action shall be taken within 60 days or the permit will be revoked and action for removal of the sign commenced as provided in 75-15-131. No notice is required prior to filing a complaint after the notice period has lapsed.

History: En. Sec. 7, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 164, Ch. 316, L. 1974; R.C.M. 1947, 32-4721.

75-15-133. Nonconforming advertising as nuisance. All outdoor advertising which does not conform to the requirements of this part is a public nuisance.

History: En. Sec. 16, Ch. 2, 2nd Ex. L. 1971; amd. Sec. 3, Ch. 140, L. 1977; R.C.M. 1947, 32-4728.

Cross-References

Public nuisance, 45-8-111.

75-15-134. Violation as misdemeanor. Any person violating any provision of this part is guilty of a misdemeanor.

History: En. Sec. 15, Ch. 2, 2nd Ex. L. 1971; R.C.M. 1947, 32-4727.

Cross-References

Misdemeanor penalty when no penalty specified, 46-18-212.

Part 2
Junkyards

Part Cross-References

Removal and sale of abandoned vehicles, Title 61, ch. 12, part 4.

Motor vehicle recycling and disposal, Title 75, ch. 10, part 5.

75-15-201. Purposes. (1) For the purposes of promoting the public safety, health, and welfare and the convenience and enjoyment of public travel, to protect the public investment in public highways, and to preserve and enhance the scenic beauty of lands bordering public highways, it is hereby declared to be in the public interest to regulate and restrict the establishment, operation, and maintenance of junkyards in areas adjacent to the interstate and primary systems within this state.

(2) The legislature hereby finds and declares that junkyards which do not conform to the requirements of this part are public nuisances.

History: En. Sec. 1, Ch. 285, L. 1967; R.C.M. 1947, 32-4513.

Cross-References

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.

Public nuisance, 45-8-111.

75-15-202. Interpretation. Nothing in this part shall be construed to abrogate or affect the provisions of any lawful ordinance, regulation, or resolution which is more restrictive than the provisions of this part.

History: En. Sec. 11, Ch. 285, L. 1967; R.C.M. 1947, 32-4523.

75-15-203. Definitions. As used in this part only, the following definitions apply:

(1) "Interstate system" means that portion of the national system of interstate and defense highways located within this state as officially designated or as may hereafter be so designated by the state transportation commission and approved by the secretary of transportation pursuant to the provisions of Title 23, United States Code, "Highways".

(2) "Junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, or waste; iron, steel, and other old or scrap ferrous or nonferrous material.

(3) "Junkyard" means any establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, excluding a motor vehicle graveyard or motor vehicle wrecking facility which is regulated under Title 75, chapter 10, part 5, and excluding a garbage dump or sanitary landfill which is regulated under Title 75, chapter 10, part 2.

(4) "Primary system" means that portion of connected main highways as officially designated or as may hereafter be so designated by the commission and approved by the secretary of transportation pursuant to the provisions of Title 23, United States Code, "Highways".

History: En. Sec. 2, Ch. 285, L. 1967; R.C.M. 1947, 32-4514; amd. Sec. 1, Ch. 340, L. 1983; amd. Sec. 6, Ch. 75, L. 1995.

75-15-204. Agreements with the United States. The department of transportation may enter into agreements with the United States secretary of transportation as provided in Title 23, United States Code, relating to the control of junkyards in areas adjacent to the interstate and primary systems and take action in the name of the state to comply with the terms of those agreements.

History: En. Sec. 10, Ch. 285, L. 1967; amd. Sec. 159, Ch. 316, L. 1974; R.C.M. 1947, 32-4522; amd. Sec. 3, Ch. 512, L. 1991.

75-15-205. Injunction. The department of transportation may apply to the district court for the county in which is located any junkyard not conforming to the requirements of this part for an injunction to abate such nuisance.

History: En. Sec. 9, Ch. 285, L. 1967; amd. Sec. 158, Ch. 316, L. 1974; R.C.M. 1947, 32-4521; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Injunctions, Title 27, ch. 19.

75-15-206 through 75-15-210 reserved.

75-15-211. License required. No person shall establish, operate, or maintain a junkyard, any portion of which is within 1,000 feet of the nearest edge of the right-of-way of any interstate or primary highway, without obtaining a license.

History: En. Sec. 3, Ch. 285, L. 1967; amd. Sec. 12, Ch. 410, L. 1973; R.C.M. 1947, 32-4515.

75-15-212. Repealed. Sec. 5, Ch. 340, L. 1983.

History: En. Sec. 4, Ch. 285, L. 1967; amd. Sec. 13, Ch. 410, L. 1973; amd. Sec. 9, Ch. 252, L. 1977; R.C.M. 1947, 32-4516(1).

75-15-213. Repealed. Sec. 5, Ch. 340, L. 1983.

History: En. Sec. 4, Ch. 285, L. 1967; amd. Sec. 13, Ch. 410, L. 1973; amd. Sec. 9, Ch. 252, L. 1977; R.C.M. 1947, 32-4516(2).

75-15-214. License for junkyards. (1) The department of transportation may issue a license for a junkyard.

(2) The department of transportation may acquire an interest in land for screening purposes or may pay for screening installation and materials as authorized by this part.

History: En. Sec. 4, Ch. 285, L. 1967; amd. Sec. 13, Ch. 410, L. 1973; amd. Sec. 9, Ch. 252, L. 1977; R.C.M. 1947, 32-4516(3), (4); amd. Sec. 2, Ch. 340, L. 1983; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Department of Transportation, Title 2, ch. 15, part 25.

General powers and duties of Department of Transportation, Title 60, ch. 2, part 2.

75-15-215. Restrictions as to location. No license may be granted for the establishment, maintenance, or operation of a junkyard within 1,000 feet of the nearest edge of the right-of-way of a highway on the interstate or primary systems except a license may be granted for a junkyard:

(1) screened by natural objects, planted objects, fences, or other appropriate means so as not to be visible from the main-traveled way of any such highway or otherwise removed from sight;

(2) located within an area zoned for industrial use under authority of law;

(3) located within an unzoned industrial area, as determined from actual land uses and defined by rules promulgated by the department of transportation;

(4) that is not visible from the main-traveled way of any such highway.

History: En. Sec. 5, Ch. 285, L. 1967; R.C.M. 1947, 32-4517; amd. Sec. 15, Ch. 68, L. 1979; amd. Sec. 3, Ch. 512, L. 1991.

75-15-216 through 75-15-220 reserved.

75-15-221. Repealed. Sec. 2, Ch. 61, L. 1979.

History: En. Sec. 6, Ch. 285, L. 1967; amd. Sec. 155, Ch. 316, L. 1974; R.C.M. 1947, 32-4518.

75-15-222. Rules governing screening. (1) The department of transportation may adopt rules governing the materials to be used in and the location, planting, construction, and maintenance of screening or fencing required by this part.

(2) The department of transportation may determine that in the best interests of the state, screening in addition to that required by rules of the department of transportation as of July 1, 1979, is required of certain junkyards or motor vehicle wrecking facilities licensed under this title. The cost of any additional screening shall be borne or reimbursed by the department of transportation.

History: En. Sec. 7, Ch. 285, L. 1967; amd. Sec. 156, Ch. 316, L. 1974; amd. Sec. 10, Ch. 252, L. 1977; R.C.M. 1947, 32-4519; amd. Sec. 1, Ch. 61, L. 1979; amd. Sec. 3, Ch. 340, L. 1983; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

75-15-223. Authority to acquire interest in land for screening and removal of junkyards, motor vehicle graveyards, motor vehicle wrecking facilities, garbage dumps, and sanitary landfills. (1) When the department of transportation determines that it is in the best interests of the state, it may acquire land or interest in land that may be necessary to provide adequate screening for junkyards, motor vehicle graveyards, motor vehicle wrecking facilities, garbage dumps, and sanitary landfills.

(2) When the department of transportation determines that the topography of the land adjoining the highway will not permit adequate or economically feasible screening, it may acquire by gift, purchase, exchange, or condemnation interest in land that may be necessary to secure the relocation, removal, or disposal of junkyards, motor vehicle graveyards, motor vehicle wrecking facilities, garbage dumps, or sanitary landfills that were either lawfully:

(a) in existence on October 22, 1965;

(b) along any highway made a part of the interstate or primary systems on or after October 22, 1965, and before January 1, 1968; or

(c) established on or after January 1, 1968.

(3) The department of transportation shall pay just compensation to the owner for the relocation, removal, or disposal of any facility. Condemnation must be exercised pursuant to Title 60, chapter 4, and Title 70, chapter 30.

(4) Any new site chosen by the department of transportation pursuant to subsection (2) for the relocation of a garbage dump or sanitary landfill must be approvable as the site of a solid waste management system pursuant to Title 75, chapter 10, part 2, and the rules promulgated under authority of that part.

History: En. Sec. 8, Ch. 285, L. 1967; amd. Sec. 157, Ch. 316, L. 1974; R.C.M. 1947, 32-4520; amd. Sec. 4, Ch. 340, L. 1983; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 91, Ch. 125, L. 2001.

Cross-References

Department of Transportation, Title 2, ch. 15, part 25.

General powers and duties of Department of Transportation, Title 60, ch. 2, part 2.

CHAPTER 16
TRANSBOUNDARY POLLUTION

Part 1 — Uniform Transboundary Pollution Reciprocal Access Act

75-16-101. Short title.
75-16-102. Definitions.
75-16-103. Forum.
75-16-104. Right to relief.
75-16-105. Applicable law.
75-16-106. Equality of rights.
75-16-107. Right additional to other rights.
75-16-108. Application of sovereign immunity.
75-16-109. Uniformity of application and construction.

Chapter Cross-References

Nuisances, Title 27, ch. 30.

Part 1
Uniform Transboundary Pollution Reciprocal Access Act

75-16-101. Short title. This part may be cited as the "Uniform Transboundary Pollution Reciprocal Access Act".

History: En. Sec. 1, Ch. 203, L. 1983.

75-16-102. Definitions. As used in this part, the following definitions apply:

(1) "Person" means an individual person, corporation, business trust, estate, partnership, association, joint venture, government in its private or public capacity, governmental subdivision or agency, or any other legal entity.

(2) "Reciprocating jurisdiction" means a state of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, or a province or territory of Canada, which has enacted this part or provides substantially equivalent access to its courts and administrative agencies.

History: En. Sec. 2, Ch. 203, L. 1983.

75-16-103. Forum. An action or other proceeding for injury or threatened injury to property or person in a reciprocating jurisdiction caused by pollution originating or that may originate in this state may be brought in this state.

History: En. Sec. 3, Ch. 203, L. 1983.

75-16-104. Right to relief. A person who suffers or is threatened with injury to that person's person or property in a reciprocating jurisdiction caused by pollution originating or that may originate in this state has the same rights to relief with respect to the injury or threatened injury and may enforce those rights in this state as if the injury or threatened injury occurred in this state.

History: En. Sec. 4, Ch. 203, L. 1983; amd. Sec. 2506, Ch. 56, L. 2009.

Cross-References

Injury defined, 27-1-106.
Kinds of relief — when given, 27-1-107.

75-16-105. Applicable law. The law to be applied in an action or other proceeding brought pursuant to this part, including what constitutes "pollution", is the law of this state, excluding choice of law rules.

History: En. Sec. 5, Ch. 203, L. 1983.

Cross-References

Issues of law to be decided by court, 25-7-102.

75-16-106. Equality of rights. This part does not accord a person injured or threatened with injury in another jurisdiction any rights superior to those that the person would have if injured or threatened with injury in this state.

History: En. Sec. 6, Ch. 203, L. 1983.

75-16-107. Right additional to other rights. The right provided in this part is in addition to and not in derogation of any other rights.

History: En. Sec. 7, Ch. 203, L. 1983.

75-16-108. Application of sovereign immunity. The defense of sovereign immunity is applicable in any action or other proceeding brought pursuant to this part only to the extent that it would apply to a person injured or threatened with injury in this state.

History: En. Sec. 8, Ch. 203, L. 1983.

Cross-References

State subject to suit, Art. II, sec. 18, Mont. Const.
Government liability exposure, Title 2, ch. 9, part 1.
Claims and actions against state, Title 2, ch. 9, part 3.

75-16-109. Uniformity of application and construction. This part shall be applied and construed to carry out its general purpose to make uniform the law with respect to the subject of this part among jurisdictions enacting it.

History: En. Sec. 9, Ch. 203, L. 1983.

CHAPTERS 17 THROUGH 19
RESERVED

CHAPTER 20
MAJOR FACILITY SITING

Part 1 — Policy and General Provisions

75-20-101. Short title.
75-20-102. Policy and legislative findings.
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75-20-106. Contracts for information.
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Part 2 — Certification Proceedings

75-20-201. Certificate required — operation in conformance — certificate for nuclear facility — applicability to federal facilities.
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75-20-204. Facilities subject to federal energy regulatory commission and nuclear regulatory commission jurisdiction.
75-20-205. Repealed.
75-20-206. Legislative approval of siting of uranium conversion and enrichment facilities — conditions.
75-20-207. Notice requirement for certain electric transmission lines.
75-20-208. Certain electric transmission lines — verification of requirements.
75-20-209 and 75-20-210 reserved.
75-20-211. Application — filing and contents — proof of service and notice.
75-20-212. Cure for failure of service.
75-20-213. Supplemental material — amendments.
75-20-214. Repealed.
75-20-215. Filing fee — accountability — refund — use.
75-20-216. Study, evaluation, and report on proposed facility — assistance by other agencies.
75-20-217. Voiding an application.
75-20-218. Repealed.
75-20-219. Amendments to certificate.
75-20-220. Repealed.
75-20-221. Repealed.
75-20-222. Repealed.
75-20-223. Board review of department decisions.
75-20-224 reserved.
75-20-225. Repealed.
75-20-226. Repealed.
75-20-227. Repealed.
75-20-228. Electric generating facility fuel source change — notice requirements.
75-20-229 and 75-20-230 reserved.
75-20-231. Expedited review.
75-20-232. Criteria for identifying proposed facilities that qualify for expedited review.

Part 3 — Decisions

75-20-301. Decision of department — findings necessary for certification.
75-20-302. Conditions imposed.
75-20-303. Opinion issued with decision — contents.
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Part 4 — Postcertification and Legal Responsibilities

75-20-401. Additional requirements by other governmental agencies not permitted after issuance of certificate — exceptions — venue for challenging certificate issuance.
75-20-402. Monitoring.
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75-20-405. Action to recover damages to water supply.
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75-20-407. Jurisdiction of courts restricted.
75-20-408. Penalties for violation of chapter — civil actions to enforce.
75-20-409. Optional annual installments for location of facility on landowner's property.
75-20-410. Order not stayed by appeal — stay or suspension by court — limitations.
75-20-411. Surety bond — other security.

Part 5 — Long-Range Plans (Repealed)

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Part 10 — Geothermal Exploration

75-20-1001. Geothermal exploration — notification of department.

Part 11 — Energy Conversion Facility (Repealed)

Part 12 — Nuclear Energy Conversion (Repealed)

Part 13 — Nuclear Fuel Storage Facilities

75-20-1301 reserved.
75-20-1302. Legislative approval of siting of spent nuclear fuel storage facilities — conditions — definition.

Chapter Cross-References
Duty to notify weed management district when proposed project will disturb land, 7-22-2152.
Application of nuclear regulation provisions, 50-79-302.
Penalties, fees, and interest, Title 75, ch. 1, part 10.
Montana Hazardous Waste Act, Title 75, ch. 10, part 4.

Part 1
Policy and General Provisions

75-20-101. Short title. This chapter shall be known and may be cited as the "Montana Major Facility Siting Act".

History: En. Sec. 1, Ch. 327, L. 1973; amd. Sec. 1, Ch. 494, L. 1975; R.C.M. 1947, 70-801.

Cross-References
State policy of consistency and continuity in adoption and application of environmental rules, 90-1-101.

75-20-102. Policy and legislative findings. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Major Facility Siting Act. It is the legislature's intent that the requirements of this chapter provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) It is the constitutionally declared policy of this state to maintain and improve a clean and healthful environment for present and future generations, to protect the environmental life-support system from degradation and prevent unreasonable depletion and degradation of natural resources, and to provide for administration and enforcement to attain these objectives.

(3) It is also constitutionally declared in the state of Montana that the inalienable rights of the citizens of this state include the right to pursue life's basic necessities, to enjoy and defend life and liberty, to acquire, possess, and protect property, and to seek safety, health, and happiness in all lawful ways. The balancing of these constitutional rights is necessary in order to maintain a sustainable quality of life for all Montanans.

(4) The legislature finds that the construction of additional electric transmission facilities, pipeline facilities, or geothermal facilities may be necessary to meet the increasing need for electricity, energy, and other products. Therefore, it is necessary to ensure that the location, construction, and operation of electric transmission facilities, pipeline facilities, or geothermal facilities are in compliance with state law and that an electric transmission facility, pipeline facility, or geothermal facility may not be constructed or operated within this state without a certificate of compliance acquired pursuant to this chapter.

(5) The legislature finds that increasing the capacity of existing transmission lines by replacing less efficient aging low-voltage transmission lines with higher-voltage lines, installing new conductors to lower impedance, and adding circuits to existing transmission lines within existing linear corridors reduces energy loss, conserves energy, and prevents unreasonable depletion and degradation of natural resources. Therefore, transmission upgrades within existing corridors serve the public interest, convenience, and necessity and transmission providers are encouraged to construct those transmission upgrades.

(6) The legislature also finds that it is the purpose of this chapter to:

(a) ensure protection of the state's environmental resources, including but not limited to air, water, animals, plants, and soils;

(b) ensure consideration of socioeconomic impacts;

(c) provide citizens with the opportunity to participate in facility siting decisions; and

(d) establish a coordinated and efficient method for the processing of all authorizations required for regulated facilities under this chapter.

History: En. Sec. 2, Ch. 327, L. 1973; amd. Sec. 2, Ch. 494, L. 1975; R.C.M. 1947, 70-802; amd. Sec. 4, Ch. 329, L. 1997; amd. Sec. 1, Ch. 293, L. 2001; amd. Sec. 3, Ch. 217, L. 2003; amd. Sec. 21, Ch. 361, L. 2003; amd. Sec. 1, Ch. 224, L. 2011.

Cross-References
Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.
Duty to maintain clean and healthful environment, Art. IX, sec. 1, Mont. Const.

75-20-103. Chapter supersedes other laws or rules. This chapter supersedes other laws or regulations except as provided in 75-20-401. If any provision of this chapter is in conflict with any other law of this state or any rule promulgated thereunder, this chapter shall govern and control and the other law or rule shall be deemed superseded for the purpose of this chapter. Amendments to this chapter shall have the same effect.

History: En. Sec. 23, Ch. 327, L. 1973; amd. Sec. 23, Ch. 494, L. 1975; R.C.M. 1947, 70-823; amd. Sec. 1, Ch. 676, L. 1979.

75-20-104. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment that would significantly change the conditions under which the facility is operated.

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted under this chapter.

(3) (a) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, storage ponds, reservoirs, and any other device or equipment associated with the delivery of the energy form or product produced by a facility.

(b) The term does not include a transmission substation, a switchyard, voltage support, or other control equipment or a facility or a natural gas or crude oil gathering line 25 inches or less in inside diameter.

(4) "Board" means the board of environmental review provided for in 2-15-3502.

(5) "Certificate" means the certificate of compliance issued by the department under this chapter that is required for the construction or operation of a facility.

(6) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if the activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by subsection (10)(a) or (10)(b), including upgrading to a design capacity covered by subsection (10)(a), except that the term does not include normal maintenance or repair of an existing facility.

(7) (a) "Commencement of acquisition of right-of-way" means the actual, defined legal transfer of property.

(b) The term does not mean preliminary discussions, option agreements that are not within 60 days of commencement of acquisition, letters of intent, or other documents that do not conclusively result in the legal transfer of property.

(8) "Department" means the department of environmental quality provided for in 2-15-3501.

(9) (a) "Electrical generation facility" means any combination of a physically connected generator or generators, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce 20 average megawatts or more of electric power. The term is limited to generating facilities that produce electricity from coal-fired steam turbines, oil or gas turbines, or turbine generators driven by falling water.

(b) The term does not include:

(i) electrical generation facilities used for noncommercial purposes or exclusively for agricultural purposes; or

(ii) a qualifying small power production facility, as defined in 16 U.S.C. 796(17), that is owned and operated by a person not primarily engaged in the generation or sale of electricity other than electric power from a small power production facility that is classified under 15-6-134 and 15-6-138.

(10) "Facility" means:

(a) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term:

(i) does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length;

(ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(iii) does not include electric transmission lines that are collectively less than 150 miles in length and are required under state or federal regulations and laws, with respect to reliability of service, for an electrical generation facility, for a wind generation facility, biomass generation facility, or energy storage facility, as defined in 15-6-157, or for a green hydrogen facility or green hydrogen storage system, as defined in 15-6-163, to interconnect to a regional transmission grid or secure firm transmission service to use the grid for which the person planning to construct the line or lines has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline or centerlines;

(iv) does not include an upgrade to an existing transmission line of a design capacity of 50 kilovolts or more to increase that line's capacity, including construction outside the existing easement or right-of-way. Except for a newly acquired easement or right-of-way necessary to comply with electromagnetic field standards, a newly acquired easement or right-of-way outside the existing easement or right-of-way as described in this subsection (10)(a)(iv) may not exceed a total of 10 miles in length or be more than 10% of the existing transmission right-of-way, whichever is greater, and the purpose of the easement must be to avoid sensitive areas or inhabited areas or conform to state or federal safety, reliability, and operational standards designed to safeguard the transmission network and protect electrical workers and the public.

(v) does not include a transmission substation, a switchyard, voltage support, or other control equipment;

(vi) does not include an energy storage facility, as defined in 15-6-157;

(vii) does not include a green hydrogen facility or green hydrogen storage system, as defined in 15-6-163;

(b) (i) each pipeline, whether partially or wholly within the state, greater than 25 inches in inside diameter and 50 miles in length, and associated facilities, except that the term does not include:

(A) a pipeline within the boundaries of the state that is used exclusively for the irrigation of agricultural crops or for drinking water;

(B) a pipeline greater than 25 inches in inside diameter and 50 miles in length for which the person planning to construct the pipeline has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline; or

(C) a green hydrogen pipeline, as defined in 15-6-163;

(ii) each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter and 30 miles in length, and associated facilities used to transport coal suspended in water;

(c) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 50 megawatts or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant, except that the term does not include a compressed air energy storage facility, as defined in 15-6-157, or a green hydrogen facility or green hydrogen storage system, as defined in 15-6-163; or

(d) for the purposes of 75-20-204 only, a plant, unit, or other facility capable of generating 50 megawatts of hydroelectric power or more or any addition thereto.

(11) "Person" means any individual, group, firm, partnership, corporation, limited liability company, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

(12) "Sensitive areas" means government-designated areas that have been recognized for their importance to Montana's wildlife, wilderness, culture, and historic heritage, including but not limited to national wildlife refuges, state wildlife management areas, federal areas of critical environmental concern, state parks and historic sites, designated wilderness areas, wilderness study areas, designated wild and scenic rivers, or national parks, monuments, or historic sites.

(13) "Transmission reliability agencies" means the federal energy regulatory commission, the western electricity coordinating council, the national electric reliability council, and the midwest reliability organization.

(14) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.

(15) "Upgrade" means to increase the electrical carrying capacity of a transmission line by actions including but not limited to:

(a) installing larger conductors;

(b) replacing insulators;

(c) replacing pole or tower structures;

(d) changing structure spacing, design, or guying; or

(e) installing additional circuits.

(16) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use.

History: En. Sec. 3, Ch. 327, L. 1973; amd. Sec. 1, Ch. 231, L. 1974; amd. Sec. 1, Ch. 268, L. 1974; amd. Sec. 3, Ch. 494, L. 1975; R.C.M. 1947, 70-803; amd. Sec. 1, Ch. 133, L. 1979; amd. Sec. 1, Ch. 527, L. 1979; amd. Sec. 2, Ch. 676, L. 1979; amd. Sec. 1, Ch. 539, L. 1981; amd. Sec. 8, Ch. 573, L. 1985; amd. Sec. 1, Ch. 597, L. 1987; amd. Sec. 213, Ch. 418, L. 1995; amd. Secs. 534, 568, Ch. 546, L. 1995; amd. Sec. 1, Ch. 583, L. 1995; amd. Sec. 5, Ch. 329, L. 1997; amd. Sec. 1, Ch. 13, L. 1999; amd. Sec. 2, Ch. 293, L. 2001; amd. Sec. 4, Ch. 217, L. 2003; amd. Sec. 1, Ch. 324, L. 2003; amd. Sec. 1, Ch. 142, L. 2005; amd. Sec. 1, Ch. 260, L. 2007; amd. Sec. 5, Ch. 357, L. 2009; amd. Sec. 1, Ch. 469, L. 2009; amd. Sec. 39, Ch. 19, L. 2011; amd. Sec. 2, Ch. 224, L. 2011; amd. Sec. 5, Ch. 309, L. 2011; amd. Sec. 1, Ch. 382, L. 2011; amd. Sec. 1, Ch. 447, L. 2019; amd. Sec. 5, Ch. 13, L. 2021; amd. Sec. 8, Ch. 291, L. 2021; amd. Sec. 4, Ch. 409, L. 2021.

Cross-References

Pipeline carriers, Title 69, ch. 13.

The Montana Strip and Underground Mine Reclamation Act, Title 82, ch. 4, part 2.

75-20-105. Adoption of rules. The department may adopt rules implementing the provisions of this chapter.

History: En. Sec. 20, Ch. 327, L. 1973; amd. Sec. 4, Ch. 268, L. 1974; amd. Sec. 20, Ch. 494, L. 1975; R.C.M. 1947, 70-820(1); amd. Sec. 1, Ch. 312, L. 1987; amd. Sec. 70, Ch. 324, L. 2021.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

75-20-106. Contracts for information. (1) The department may contract with a potential applicant under this chapter in advance of the filing of a formal application for the development of information or provision of services required hereunder.

(2) Payments made to the department under such a contract shall be credited against the fee payable hereunder.

History: En. Sec. 6, Ch. 327, L. 1973; amd. Sec. 1, Ch. 115, L. 1974; amd. Sec. 2, Ch. 268, L. 1974; amd. Sec. 1, Ch. 270, L. 1975; amd. Sec. 6, Ch. 494, L. 1975; amd. Sec. 1, Ch. 179, L. 1977; R.C.M. 1947, 70-806(2)(c).

75-20-107 through 75-20-110 reserved.

75-20-111. Grants, gifts, and funds. The department may receive grants, gifts, and other funds from any public or private source to assist in its activities under this chapter.

History: En. Sec. 22, Ch. 327, L. 1973; amd. Sec. 22, Ch. 494, L. 1975; R.C.M. 1947, 70-822.

75-20-112. Money to state special revenue fund. All fees, taxes, fines, and penalties collected under this chapter, except those collected by a justice's court, shall be deposited in the state special revenue fund for use by the department in carrying out its functions and responsibilities under this chapter.

History: En. 70-824 by Sec. 3, Ch. 270, L. 1975; R.C.M. 1947, 70-824; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 46, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Fund structure, 17-2-102.

75-20-113. Power to exercise eminent domain. A person issued a certificate pursuant to this chapter may acquire by eminent domain any interest in property, as provided in Title 70, chapter 30, for a public use authorized by law to construct a facility in accordance with the certificate.

History: En. Sec. 2, Ch. 321, L. 2011.

Part 2
Certification Proceedings

75-20-201. Certificate required — operation in conformance — certificate for nuclear facility — applicability to federal facilities. (1) Except for a facility under diligent onsite physical construction or in operation on January 1, 1973, a person may not commence to construct a facility in the state without first applying for and obtaining a certificate of compliance issued with respect to the facility by the department.

(2) A facility with respect to which a certificate is issued may not be constructed, operated, or maintained except in conformity with the certificate and any terms, conditions, and modifications contained within the certification.

(3) A certificate may only be issued pursuant to this chapter.

(4) A person that proposes to construct an energy-related project that is not defined as a facility pursuant to 75-20-104(10) may petition the department to review the energy-related project under the provisions of this chapter. The construction or installation of an energy storage facility, as defined in 15-6-157, or a green hydrogen facility, a green hydrogen pipeline, or a green hydrogen storage system, as defined in 15-6-163, is not considered an energy-related project under the provisions of this chapter. A certificate for the construction or installation of an energy storage facility or a green hydrogen facility, a green hydrogen pipeline, or a green hydrogen storage system, as defined in 15-6-163, is not required under this chapter.

(5) This chapter applies, to the fullest extent allowed by federal law, to all federal facilities and to all facilities over which an agency of the federal government has jurisdiction.

(6) All judicial challenges of certificates for projects with a project cost, as determined by the court, of more than $1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action.

History: En. Sec. 4, Ch. 327, L. 1973; amd. Sec. 4, Ch. 494, L. 1975; R.C.M. 1947, 70-804(1); amd. Sec. 3, I.M. 80, app. Nov. 7, 1978; amd. Sec. 1, Ch. 167, L. 1983; amd. Sec. 6, Ch. 329, L. 1997; amd. Sec. 5, Ch. 217, L. 2003; amd. Sec. 22, Ch. 361, L. 2003; amd. Sec. 8, Ch. 337, L. 2005; amd. Sec. 6, Ch. 309, L. 2011; amd. Sec. 2, Ch. 447, L. 2019; amd. Sec. 6, Ch. 13, L. 2021; amd. Sec. 9, Ch. 291, L. 2021; amd. Sec. 5, Ch. 409, L. 2021.

Cross-References

Facilities subject to federal energy regulatory commission and nuclear regulatory commission jurisdiction, 75-20-204.

Legislative approval of siting of uranium conversion and enrichment facilities — conditions, 75-20-206.

75-20-202. Repealed. Sec. 24, Ch. 329, L. 1997.

History: En. Sec. 4, Ch. 327, L. 1973; amd. Sec. 4, Ch. 494, L. 1975; R.C.M. 1947, 70-804(3) thru (5); amd. Sec. 3, I.M. 80, app. Nov. 7, 1978; amd. Sec. 2, Ch. 539, L. 1981; amd. Sec. 2, Ch. 167, L. 1983; amd. Sec. 9, Ch. 573, L. 1985; amd. Sec. 1, Ch. 591, L. 1985; amd. Sec. 214, Ch. 418, L. 1995; amd. Sec. 535, Ch. 546, L. 1995; amd. Sec. 2, Ch. 583, L. 1995.

75-20-203. Certificate transferable. A certificate may be transferred to a person who agrees to comply with the terms, conditions, and modifications contained in the certificate.

History: En. Sec. 4, Ch. 327, L. 1973; amd. Sec. 4, Ch. 494, L. 1975; R.C.M. 1947, 70-804(2); amd. Sec. 3, I.M. 80, app. Nov. 7, 1978; amd. Sec. 3, Ch. 676, L. 1979; amd. Sec. 3, Ch. 583, L. 1995.

75-20-204. Facilities subject to federal energy regulatory commission and nuclear regulatory commission jurisdiction. (1) For a facility that is subject to the jurisdiction of the federal energy regulatory commission or the nuclear regulatory commission as authorized in 75-20-206 or 75-20-1302, the department shall file a state recommendation with the commission.

(2) A person making application to the federal energy regulatory commission or nuclear regulatory commission as authorized in 75-20-206 or 75-20-1302 shall file with the department notice of and a copy of the federal application regarding any facility subject to subsection (1). The state recommendation must be based on its study of the federal application and other material gained through intervention in the federal proceeding.

(3) A person subject to the provisions of subsection (2) shall pay a fee to the department at the time that an application is filed with the federal energy regulatory commission or nuclear regulatory commission as authorized in 75-20-206 or 75-20-1302. The fee must be used by the department to carry out its responsibilities to develop a state recommendation and participate as a party in any necessary federal proceeding to assert the state recommendation. The fee may not exceed one-half the amount that could be assessed under 75-20-215. A fee prescribed by 75-20-215 may not be assessed against a person paying a fee under this section.

(4) A person who fails to file a timely notice of and a copy of the federal application with the department, preventing the department from timely compliance with this section and with the rules, statutes, or procedures governing the proceedings before the federal energy regulatory commission or nuclear regulatory commission as authorized in 75-20-206 or 75-20-1302, is subject to the provisions of 75-20-408.

History: En. Sec. 2, Ch. 591, L. 1985; amd. Sec. 2, Ch. 273, L. 1997; amd. Sec. 2, Ch. 503, L. 2025; amd. Sec. 2, Ch. 700, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 2, Ch. 503, L. 2025. Amendment effective May 8, 2025.

See 2025 Session Law for amendment made by sec. 2, Ch. 700, L. 2025. Amendment effective May 13, 2025.

75-20-205. Repealed. Sec. 24, Ch. 329, L. 1997.

History: En. Sec. 4, Ch. 591, L. 1985; amd. Sec. 1, Ch. 246, L. 1987; amd. Sec. 215, Ch. 418, L. 1995; amd. Sec. 536, Ch. 546, L. 1995.

75-20-206. Legislative approval of siting of uranium conversion and enrichment facilities — conditions. (1) The legislature hereby authorizes the siting of uranium conversion and enrichment facilities within Montana. A facility is authorized if:

(a) it is operated on the site of and to convert and enrich mined and milled uranium within the state or transported from a location mined and milled not within the boundaries of the state;

(b) the facility has received a state recommendation from the department of environmental quality, pursuant to 75-20-204; and

(c) the facility has received a license to convert and enrich mined and milled uranium from the federal nuclear regulatory commission.

(2) For the purposes of this section:

(a) "uranium conversion" means the process used to convert natural uranium oxide into uranium hexafluoride; and

(b) "uranium enrichment" means the process used to enrich uranium through gaseous diffusion, gas centrifuges, or laser isotope separation.

History: En. Sec. 1, Ch. 503, L. 2025.

Compiler's Comments

Effective Date: Section 4, Ch. 503, L. 2025, provided: "[This act] is effective on passage and approval." Approved May 8, 2025.

75-20-207. Notice requirement for certain electric transmission lines. Whenever a person plans to construct an electric transmission line or associated facilities under the provisions of 75-20-104(10)(a)(ii), it must provide public notice to persons residing in the area in which any portion of the electric transmission facility may be located and to the department. This notice must be made no less than 60 days prior to the commencement of acquisition of right-of-way as defined in 75-20-104 by publication of a summary describing the transmission facility and the proposed location of the facility in those newspapers that will substantially inform those persons of the construction and by mailing a summary to the department. The notice must inform the property owners of their rights under this chapter concerning the location of the facility and that more information concerning their rights may be obtained from the department.

History: En. Sec. 2, Ch. 597, L. 1987; amd. Sec. 7, Ch. 329, L. 1997; amd. Sec. 3, Ch. 293, L. 2001; amd. Sec. 3, Ch. 447, L. 2019; amd. Sec. 7, Ch. 13, L. 2021.

75-20-208. Certain electric transmission lines — verification of requirements. (1) Prior to constructing a transmission line under 75-20-104(10)(a)(ii), the person planning to construct the line shall provide to the department within 36 months of the date of the public notice provided under 75-20-207, unless extended by the department for good cause:

(a) copies of the right-of-way agreements or options for a right-of-way containing sufficient information to establish landowner consent to construct the line; and

(b) sufficient information for the department to verify that the requirements of 75-20-104(10)(a)(ii) are satisfied.

(2) The provisions of 75-20-104(10)(a)(ii) do not apply to any facility for which public notice under 75-20-207 has been given but for which the requirements of subsection (1) of this section have not been complied with.

History: En. Sec. 3, Ch. 597, L. 1987; amd. Sec. 216, Ch. 418, L. 1995; amd. Sec. 537, Ch. 546, L. 1995; amd. Sec. 8, Ch. 329, L. 1997; amd. Sec. 4, Ch. 293, L. 2001; amd. Sec. 4, Ch. 447, L. 2019; amd. Sec. 8, Ch. 13, L. 2021.

75-20-209 and 75-20-210 reserved.

75-20-211. Application — filing and contents — proof of service and notice. (1) (a) An applicant shall file with the department an application for a certificate under this chapter and for the permits required under the laws administered by the department in the form that is required under applicable rules, containing the following information:

(i) a description of the proposed location and of the facility to be built;

(ii) a summary of any preexisting studies that have been made of the impact of the facility;

(iii) for facilities defined in 75-20-104(10)(a) and (10)(b), a statement explaining the need for the facility, a description of reasonable alternate locations for the facility, a general description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the proposed location is best suited for the facility;

(iv) (A) for facilities as defined in 75-20-104(10)(a) and (10)(b), baseline data for the primary and reasonable alternate locations; or

(B) for facilities as defined in 75-20-104(10)(c), baseline data for the proposed location and, at the applicant's option, any alternative locations acceptable to the applicant for siting the facility;

(v) at the applicant's option, an environmental study plan to satisfy the requirements of this chapter; and

(vi) other information that the applicant considers relevant or that the department by order or rule may require.

(b) If a copy or copies of the studies referred to in subsection (1)(a)(ii) are filed with the department, the copy or copies must be available for public inspection.

(2) An application may consist of an application for two or more facilities in combination that are physically and directly attached to each other and are operationally a single operating entity.

(3) The copy of the application must be accompanied by a notice specifying the date on or about which the application is to be filed.

(4) An application must also be accompanied by proof that public notice of the application was given to persons residing in the county in which any portion of the proposed facility is proposed or is alternatively proposed to be located, by publication of a summary of the application in those newspapers that will substantially inform those persons of the application.

History: En. Sec. 6, Ch. 327, L. 1973; amd. Sec. 1, Ch. 115, L. 1974; amd. Sec. 2, Ch. 268, L. 1974; amd. Sec. 1, Ch. 270, L. 1975; amd. Sec. 6, Ch. 494, L. 1975; amd. Sec. 1, Ch. 179, L. 1977; R.C.M. 1947, 70-806(part); amd. Sec. 1, Ch. 553, L. 1979; amd. Sec. 4, Ch. 676, L. 1979; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 3, Ch. 539, L. 1981; amd. Sec. 2, Ch. 312, L. 1987; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 217, Ch. 418, L. 1995; amd. Sec. 538, Ch. 546, L. 1995; amd. Sec. 9, Ch. 329, L. 1997; amd. Sec. 5, Ch. 293, L. 2001; amd. Sec. 208, Ch. 483, L. 2001; amd. Sec. 6, Ch. 217, L. 2003; amd. Sec. 5, Ch. 447, L. 2019; amd. Sec. 9, Ch. 13, L. 2021.

Cross-References

Department of Revenue, 2-15-1301.
Department of Public Service Regulation, 2-15-2601; Title 69, ch. 1, part 1.
Environmental Quality Council, Title 5, ch. 16.
Educational impact statement required — judicial enforcement, 20-1-208, 20-1-209.
Department of Transportation — general powers and duties, Title 60, ch. 2, part 2.
Air quality permit required, 75-2-211.
Water quality permit required, Title 75, ch. 5, part 4.
Department of Fish, Wildlife, and Parks — general powers and duties, Title 87, ch. 1, part 2.

75-20-212. Cure for failure of service. Inadvertent failure of service on or notice to any of the municipalities, government agencies, or persons identified in 75-20-211 may be cured pursuant to orders of the department designed to afford them adequate notice to enable their effective participation in the proceeding.

History: En. Sec. 6, Ch. 327, L. 1973; amd. Sec. 1, Ch. 115, L. 1974; amd. Sec. 2, Ch. 268, L. 1974; amd. Sec. 1, Ch. 270, L. 1975; amd. Sec. 6, Ch. 494, L. 1975; amd. Sec. 1, Ch. 179, L. 1977; R.C.M. 1947, 70-806(part); amd. Sec. 4, Ch. 583, L. 1995.

75-20-213. Supplemental material — amendments. (1) Except as provided in 75-20-228, an application for an amendment of an application or a certificate must be in the form and contain the information that the department by rule or by order prescribes. Notice of an application must be given as set forth in 75-20-211(3) and (4).

(2) An application may be amended by an applicant any time prior to the department's recommendation. If the proposed amendment is such that it prevents the department or the agencies listed in 75-20-216(6) from carrying out their duties and responsibilities under this chapter, the department may require additional filing fees and additional amendment application review time. The total review time may not exceed 9 months from the date the department accepts a completed application for amendment.

(3) The applicant shall submit supplemental material in a timely manner as requested by the department or as offered by the applicant to explain, support, or provide the detail with respect to an item described in the original application, without filing an application for an amendment. The department's determination as to whether information is supplemental or whether an application for amendment is required is conclusive.

History: En. Sec. 6, Ch. 327, L. 1973; amd. Sec. 1, Ch. 115, L. 1974; amd. Sec. 2, Ch. 268, L. 1974; amd. Sec. 1, Ch. 270, L. 1975; amd. Sec. 6, Ch. 494, L. 1975; amd. Sec. 1, Ch. 179, L. 1977; R.C.M. 1947, 70-806(6); amd. Sec. 5, Ch. 676, L. 1979; amd. Sec. 218, Ch. 418, L. 1995; amd. Sec. 10, Ch. 329, L. 1997; amd. Sec. 7, Ch. 217, L. 2003; amd. Sec. 6, Ch. 553, L. 2021.

75-20-214. Repealed. Sec. 8, Ch. 591, L. 1985.

History: En. Sec. 6, Ch. 327, L. 1973; amd. Sec. 1, Ch. 115, L. 1974; amd. Sec. 2, Ch. 268, L. 1974; amd. Sec. 1, Ch. 270, L. 1975; amd. Sec. 6, Ch. 494, L. 1975; amd. Sec. 1, Ch. 179, L. 1977; R.C.M. 1947, 70-806(7); amd. Sec. 6, Ch. 676, L. 1979.

75-20-215. Filing fee — accountability — refund — use. (1) (a) A filing fee must be deposited in the state special revenue fund for the use of the department in administering Title 75, chapter 1, and this chapter. The applicant shall pay to the department a filing fee as provided in this section based upon the department's estimated costs of processing the application under this chapter. The fee may not exceed the following scale based upon the estimated cost of the facility:

(i) 6% of any estimated cost up to $1 million; plus

(ii) 1% of any estimated cost over $1 million and up to $5 million; plus

(iii) 0.8% of any estimated cost over $5 million and up to $10 million; plus

(iv) 0.5% of any estimated cost over $10 million and up to $20 million; plus

(v) 0.25% of any estimated cost over $20 million and up to $100 million; plus

(vi) 0.125% of any estimated cost over $100 million and up to $500 million; plus

(vii) 0.05% of any estimated cost over $500 million and up to $1 billion; plus

(viii) 0.025% of any estimated cost over $1 billion.

(b) The department may allow in its discretion a credit against the fee payable under this section for the development of information or providing of services required under this chapter or required for preparation of an environmental impact statement or assessment under the Montana or national environmental policy acts. The applicant may submit the information to the department, together with an accounting of the expenses incurred in preparing the information. The department shall evaluate the applicability, validity, and usefulness of the data and determine the amount that may be credited against the filing fee payable under this section. Upon 30 days' notice to the applicant, this credit may at any time be reduced if the department determines that it is necessary to carry out its responsibilities under this chapter.

(2) (a) The department may contract with an applicant for the development of information, provision of services, and payment of fees required under this chapter. The contract may continue an agreement entered into pursuant to 75-20-106. Payments made to the department under a

contract must be credited against the fee payable pursuant to this section. Notwithstanding the provisions of this section, the revenue derived from the filing fee must be sufficient to enable the department, the board, and the agencies listed in 75-20-216(6) to carry out their responsibilities under this chapter. The department may amend a contract to require additional payments for necessary expenses up to the limits set forth in subsection (1)(a) upon 30 days' notice to the applicant. The department and applicant may enter into a contract that exceeds the scale provided in subsection (1)(a).

(b) If a contract is not entered into, the applicant shall pay the filing fee in installments in accordance with a schedule of installments developed by the department, provided that an installment may not exceed 20% of the total filing fee provided for in subsection (1).

(3) The estimated cost of upgrading an existing transmission substation may not be included in the estimated cost of a proposed facility for the purpose of calculating a filing fee.

(4) If an application consists of a combination of two or more facilities, the filing fee must be based on the total estimated cost of the combined facilities.

(5) The applicant is entitled to an accounting of money expended and to a refund with interest at the rate of 6% a year of that portion of the filing fee not expended by the department in carrying out its responsibilities under this chapter. A refund must be made after all administrative and judicial remedies have been exhausted by all parties to the certification proceedings.

(6) The revenue derived from filing fees must be used by the department in compiling the information required for rendering a decision on a certificate and for carrying out its and the board's other responsibilities under this chapter.

History: En. Sec. 6, Ch. 327, L. 1973; amd. Sec. 1, Ch. 115, L. 1974; amd. Sec. 2, Ch. 268, L. 1974; amd. Sec. 1, Ch. 270, L. 1975; amd. Sec. 6, Ch. 494, L. 1975; amd. Sec. 1, Ch. 179, L. 1977; R.C.M. 1947, 70-806(2)(a), (2)(b); amd. Sec. 7, Ch. 676, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 128, L. 1985; amd. Sec. 219, Ch. 418, L. 1995; amd. Sec. 11, Ch. 329, L. 1997; amd. Sec. 8, Ch. 217, L. 2003.

Cross-References

Fund structure, 17-2-102.

Application of nuclear regulation provisions, 50-79-302.

Facilities subject to federal energy regulatory commission and nuclear regulatory commission jurisdiction — different fee requirement, 75-20-204.

Legislative approval of siting of uranium conversion and enrichment facilities — conditions, 75-20-206.

75-20-216. Study, evaluation, and report on proposed facility — assistance by other agencies. (1) After receipt of an application, the department shall within 30 days notify the applicant in writing that:

(a) the application is in compliance and is accepted as complete; or

(b) the application is not in compliance and shall list the deficiencies. Upon correction of these deficiencies and resubmission by the applicant, the department shall within 15 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-20-211 through 75-20-213, 75-20-215, and this section, the department shall:

(a) commence an evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-20-301, and shall issue a decision, opinion, order, certification, or permit as provided in subsection (3);

(b) use, to the extent that it considers applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency; and

(c) if a modification of a proposed facility is needed as determined by the department, consult with the applicant. The proposed modification must be analyzed in the environmental review document prepared under Title 75, chapter 1, parts 1 through 3.

(3) Except as provided in 75-1-205(4), 75-1-208(4)(b), and 75-20-231, the department shall issue, within 9 months following the date of acceptance of an application, any decision, opinion, order, certification, or permit required under the laws, other than those contained in this chapter, administered by the department. A decision, opinion, order, certification, or permit, with or without conditions, must be made under those laws. Nevertheless, the department retains authority to make the determination required under 75-20-301(1)(c) or (3). The decision, opinion, order, certification, or permit must be used in the final site selection process. Prior to the issuance of a preliminary decision by the department and pursuant to rules adopted by the department, the department shall provide an opportunity for public review and comment.

(4) Except as provided in 75-1-205(4), 75-1-208(4)(b), and 75-20-231, within 9 months following acceptance of an application for a facility, the department shall issue a report that must contain the department's studies, evaluations, recommendations, customer fiscal impact analysis, if required pursuant to 69-2-216, and other pertinent documents resulting from its study and evaluation. An environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act may be included in the department findings if compelling evidence indicates that adverse environmental impacts are likely to result due to the construction and operation of a proposed facility. If the application is for a combination of two or more facilities, the department shall issue its report within the greater of the lengths of time provided for in this subsection for either of the facilities.

(5) For projects subject to joint review by the department and a federal land management agency, the department's certification decision may be timed to correspond to the record of decision issued by the participating federal agency.

(6) The departments of transportation; fish, wildlife, and parks; natural resources and conservation; revenue; and public service regulation and the consumer counsel shall report to the department information relating to the impact of the proposed facility on each department's area of expertise. The department shall allocate funds obtained from filing fees to the departments making reports and to the office of consumer counsel to reimburse them for the costs of compiling information and issuing the required report.

History: En. Sec. 7, Ch. 327, L. 1973; amd. Sec. 3, Ch. 268, L. 1974; amd. Sec. 39, Ch. 213, L. 1975; amd. Sec. 7, Ch. 494, L. 1975; R.C.M. 1945, 70-807(1), (2); amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 8, Ch. 676, L. 1979; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 4, Ch. 539, L. 1981; amd. Sec. 3, Ch. 312, L. 1987; amd. Sec. 139, Ch. 370, L. 1987; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 220, Ch. 418, L. 1995; amd. Sec. 539, Ch. 546, L. 1995; amd. Sec. 12, Ch. 329, L. 1997; amd. Sec. 6, Ch. 293, L. 2001; amd. Sec. 7, Ch. 299, L. 2001; amd. Sec. 209, Ch. 483, L. 2001; amd. Sec. 9, Ch. 217, L. 2003; amd. Sec. 9, Ch. 337, L. 2005; amd. Sec. 5, Ch. 469, L. 2007; amd. Sec. 1, Ch. 280, L. 2017; amd. Sec. 71, Ch. 324, L. 2021.

Cross-References

Montana Environmental Policy Act, Title 75, ch. 1.

75-20-217. Voiding an application. An application may be voided by the department following notice and an opportunity for hearing for:

(1) any material and knowingly false statement in the application or in accompanying statements or studies required of the applicant;

(2) failure to file an application in substantially the form and content required by this chapter and the rules adopted under this chapter; or

(3) failure to deposit the filing fee as provided in 75-20-215.

History: En. Sec. 18, Ch. 327, L. 1973; amd. Sec. 18, Ch. 494, L. 1975; R.C.M. 1947, 70-818(2); amd. Sec. 9, Ch. 676, L. 1979; amd. Sec. 5, Ch. 583, L. 1995.

75-20-218. Repealed. Sec. 24, Ch. 329, L. 1997.

History: En. Sec. 7, Ch. 327, L. 1973; amd. Sec. 3, Ch. 268, L. 1974; amd. Sec. 39, Ch. 213, L. 1975; amd. Sec. 7, Ch. 494, L. 1975; R.C.M. 1947, 70-807(4); amd. Sec. 10, Ch. 676, L. 1979; amd. Sec. 5, Ch. 539, L. 1981; amd. Sec. 10, Ch. 573, L. 1985; amd. Sec. 221, Ch. 418, L. 1995.

75-20-219. Amendments to certificate. (1) (a) Except as provided in 75-20-228, within 30 days after notice of an amendment to a certificate is given as set forth in 75-20-213(1), including notice to all active parties to the original proceeding, the department shall determine whether the proposed change in the facility would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility as set forth in the certificate.

(b) Except as provided in 75-20-228, if the department determines that the proposed change would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility, the department shall grant, deny, or modify the amendment with conditions as it considers appropriate.

(c) Except as provided in 75-20-228, if the department determines that a modification of the proposed amendment to the certificate is needed, it shall consult with the applicant.

(2) Except as provided in 75-20-228, if those cases in which the department determines that the proposed change in the facility would not result in a material increase in any environmental impact or would not be a substantial change in the location of all or a portion of the facility, the

department shall automatically grant the amendment either as applied for or upon terms or conditions that the department considers appropriate.

(3) Except as provided in 75-20-228, if a hearing is requested under 75-20-223(2), the party requesting the hearing has the burden of showing by clear and convincing evidence that the department's determination is not reasonable.

(4) Except as provided in 75-20-228, if an amendment is required to a certificate that would affect, amend, alter, or modify a decision, opinion, order, certification, or air or water quality permit issued by the department, the amendment must be processed under the applicable statutes administered by the department.

History: En. Sec. 7, Ch. 327, L. 1973; amd. Sec. 3, Ch. 268, L. 1974; amd. Sec. 39, Ch. 213, L. 1975; amd. Sec. 7, Ch. 494, L. 1975; R.C.M. 1947, 70-807(3); amd. Sec. 11, Ch. 676, L. 1979; amd. Sec. 1, Ch. 372, L. 1981; amd. Sec. 4, Ch. 312, L. 1987; amd. Sec. 222, Ch. 418, L. 1995; amd. Sec. 7, Ch. 293, L. 2001; amd. Sec. 2, Ch. 280, L. 2017; amd. Sec. 7, Ch. 553, L. 2021.

75-20-220. Repealed. Sec. 24, Ch. 329, L. 1997.

History: En. Sec. 9, Ch. 327, L. 1973; amd. Sec. 9, Ch. 494, L. 1975; R.C.M. 1947, 70-809(3); amd. Sec. 12, Ch. 676, L. 1979; amd. Sec. 6, Ch. 539, L. 1981; amd. Sec. 223, Ch. 418, L. 1995; amd. Sec. 6, Ch. 583, L. 1995.

75-20-221. Repealed. Sec. 24, Ch. 329, L. 1997.

History: En. Sec. 8, Ch. 327, L. 1973; amd. Sec. 8, Ch. 494, L. 1975; R.C.M. 1947, 70-808; amd. Sec. 2, Ch. 553, L. 1979; amd. Sec. 13, Ch. 676, L. 1979; amd. Sec. 224, Ch. 418, L. 1995; amd. Sec. 7, Ch. 583, L. 1995.

75-20-222. Repealed. Sec. 24, Ch. 329, L. 1997.

History: En. Sec. 9, Ch. 327, L. 1973; amd. Sec. 9, Ch. 494, L. 1975; R.C.M. 1947, 70-809(1), (2); amd. Sec. 14, Ch. 676, L. 1979.

75-20-223. Board review of department decisions. (1) (a) A person aggrieved by the final decision of the department on an application for a certificate or the issuance of an air or water quality decision, opinion, order, certification, or permit under this chapter may within 30 days appeal the decision to the board. Except as provided in this section, the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board.

(b) If the department provided an opportunity for public comment on the application, the request for a hearing must be limited to those issues the party has raised in comments made to the department during the comment period unless the issues are related to a material change in law made during the comment period, to a judicial decision issued after the comment period, or to a material change to the draft permit, which was submitted for public comment, made by the department in the final permit decision and upon which the public did not have a meaningful opportunity to comment. The request for hearing must be filed within 30 days after the department renders its decision. An affidavit setting forth the grounds for the request must be filed with the request for a hearing.

(c) If a hearing is requested by a person other than the applicant or permittee, the applicant or permittee may, by filing a written election with the board within 15 days of receipt of the request for hearing, elect to have the matter proceed to hearing before the board or to have the matter submitted directly to the district court for judicial review of the agency decision. The party who requests the hearing may elect to have the matter submitted either to the board for a hearing or to the district court for judicial review by submitting a written election to the board with the request for hearing. If there are conflicting elections between the parties, the matter must proceed to district court. If the applicant or permittee is not the person who requested the hearing and has elected to have the matter submitted to the district court, the person who submitted the request for a hearing shall file a petition for review of the permit decision within 15 days of receipt of notice from the permittee. If the person who requested the hearing has elected to have the matter proceed to district court, that person shall file a petition in district court within 15 days of filing the request. The petition must be limited to matters raised in the request for hearing and must be filed in the county in which the facility is located. If the applicant or permittee fails to make an election, the matter must proceed through the contested case process before the board pursuant to the Montana Administrative Procedure Act. The board or the district court shall apply the laws and rules in place when the department issued its decision, and the board or the district court may not consider any issue from a party that was not presented to the department for the department's consideration during the formal comment

period unless the issue is related to a material change in law made during the comment period, to a judicial decision issued after the comment period, or to a material change to the draft permit, which was submitted for public comment, made by the department in the final permit decision and upon which the public did not have a meaningful opportunity to comment.

(2) A person aggrieved by the final decision of the department on an application for amendment of a certificate may within 15 days appeal the decision to the board as provided in subsections (1)(b) and (1)(c).

(3) A person aggrieved by the department's decision not to include an environmental impact statement or analysis in the department's findings pursuant to 75-20-216 may within 30 days appeal the decision as provided in subsections (1)(b) and (1)(c).

(4) The board shall issue a final decision within 4 months from the close of the hearing on the merits or, if no hearing is held, within 3 months from the date that briefing by the parties is complete unless the applicant and the party other than the applicant agree in writing to an extension of time.

(5) A customer fiscal impact analysis required by 69-2-216 may not be used as the basis of an appeal of a final decision by the department.

History: En. Sec. 3, Ch. 329, L. 1997; amd. Sec. 8, Ch. 293, L. 2001; amd. Sec. 10, Ch. 217, L. 2003; amd. Sec. 6, Ch. 469, L. 2007; amd. Sec. 8, Ch. 445, L. 2009.

75-20-224 reserved.

75-20-225. Repealed. Sec. 14, Ch. 293, L. 2001.

History: En. Sec. 3, Ch. 155, L. 1985; amd. Sec. 225, Ch. 418, L. 1995; amd. Sec. 540, Ch. 546, L. 1995; amd. Sec. 13, Ch. 329, L. 1997.

75-20-226. Repealed. Sec. 14, Ch. 293, L. 2001.

History: En. Sec. 4, Ch. 155, L. 1985; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 226, Ch. 418, L. 1995; amd. Sec. 14, Ch. 329, L. 1997.

75-20-227. Repealed. Sec. 24, Ch. 329, L. 1997.

History: En. Sec. 5, Ch. 155, L. 1985.

75-20-228. Electric generating facility fuel source change — notice requirements. (1) (a) An amendment to a certificate is not required for an electric generating facility designed to generate 250 megawatts of electricity or more if a change is made at the facility to alter fuel sources necessary to maintain operations at the facility, if the certificate holder obtains necessary air and water quality permits under Title 75, chapters 2 and 5.

(b) Changes covered by subsection (1)(a) may include both the use of a new fuel source as well as any construction or modification made to the facility for the purpose of allowing the facility to accept and utilize a new fuel source. This includes but is not limited to the construction of unloading facilities, storage facilities, and conveyance systems, including conveyors, roads, and rail spurs.

(c) The department shall waive compliance with this chapter as it relates to a change made in accordance with subsection (1)(a).

(2) (a) A certificate holder making a change in a facility in accordance with subsection (1) shall file notice of the change with the department at least 60 days prior to making the change.

(b) The department may provide notice to all active parties to the original certification proceeding, but a hearing is not required.

(3) (a) A change under subsection (1) is neither a material increase in the environmental impact of the facility nor a change or addition considered to affect compliance with a condition of the certificate.

(b) A change made in accordance with this section and notice of a change required in this section may not be used as the basis of an appeal of a final decision on a certificate by the department.

History: En. Sec. 5, Ch. 553, L. 2021.

75-20-229 and 75-20-230 reserved.

75-20-231. Expedited review. (1) Except as provided in 75-1-208(4)(b), the department shall issue a certification decision within 90 days from the date on which an application is considered complete for a facility that:

(a) is unlikely to result in significant adverse environmental impacts based on the criteria listed in 75-20-232; or

(b) is presently in existence and proposed for upgrade, reconstruction, or relocation and is unlikely to result in significant impacts pursuant to 75-20-232.

(2) A facility that qualifies for expedited review is exempt from undergoing an alternative siting study, except as provided in 75-1-201.

History: En. Sec. 1, Ch. 329, L. 1997; amd. Sec. 9, Ch. 293, L. 2001; amd. Sec. 8, Ch. 299, L. 2001; amd. Sec. 11, Ch. 217, L. 2003.

75-20-232. Criteria for identifying proposed facilities that qualify for expedited review. (1) In order for a facility to qualify for expedited review under 75-20-231, the department shall make a significance determination of the impacts associated with a proposed facility. This determination is the basis of the department's decision concerning whether the proposed facility qualifies for expedited review.

(2) The department shall consider the following criteria in determining the significance of each impact that the proposed facility has on the quality of the human environment:

(a) the severity, duration, geographic extent, and frequency of occurrence of the impact;

(b) (i) the probability that the impact will occur if the proposed action occurs; or

(ii) reasonable assurance in keeping with the potential severity of an impact that the impact will not occur;

(c) growth-inducing or growth-inhibiting aspects of the impact, including the relationship or contribution of the impact to cumulative impacts;

(d) the quantity and quality of each environmental resource or value that would be affected, including the uniqueness and fragility of those resources or values;

(e) the importance to the state and to society of each environmental resource or value that would be affected;

(f) any precedent that would be set as a result of an impact of the proposed action that would commit the department to future actions with significant impacts or to a decision in principle about future actions;

(g) potential conflict with local, state, or federal laws, requirements, or formal plans;

(h) the degree to which the impacts on the human environment are likely to create a high level of public concern; and

(i) the economic importance and benefits to the state and the local community of the proposed facility.

(3) An impact may be adverse, beneficial, or both. If none of the adverse effects of the impact are significant, expedited review is required.

History: En. Sec. 2, Ch. 329, L. 1997; amd. Sec. 12, Ch. 217, L. 2003.

Part 3
Decisions

75-20-301. Decision of department — findings necessary for certification. (1) Within 30 days after issuance of the report pursuant to 75-20-216 for facilities defined in 75-20-104(10)(a) and (10)(b), the department shall approve a facility as proposed or as modified or an alternative to a proposed facility if the department finds and determines:

(a) the basis of the need for the facility;

(b) the nature of the probable environmental impact;

(c) that the facility minimizes adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;

(d) in the case of an electric, gas, or liquid transmission line or aqueduct:

(i) what part, if any, of the line or aqueduct will be located underground;

(ii) that the facility is consistent with regional plans for expansion of the appropriate grid of the utility systems serving the state and interconnected utility systems; and

(iii) that the facility will serve the interests of utility system economy and reliability;

(e) that the location of the facility as proposed conforms to applicable state and local laws and regulations, except that the department may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive

in view of the existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or outside the directly affected government subdivisions;

(f) that the facility will serve the public interest;

(g) that the applicant will obtain any necessary air or water quality decision, opinion, order, certification, or permit as required by 75-20-216(3) prior to construction; and

(h) that the use of public lands or federally designated energy corridors for location of a facility defined in 75-20-104(10)(a) or (10)(b) was evaluated and public lands or federally designated energy corridors for that facility were selected whenever determined practicable by both the applicant and the department.

(2) In determining that the facility will serve the public interest under subsection (1)(f), the department shall consider:

(a) the items listed in subsections (1)(a) and (1)(b);

(b) the benefits to the applicant and the state resulting from the proposed facility;

(c) the effects of the economic activity resulting from the proposed facility;

(d) the effects of the proposed facility on the public health, welfare, and safety;

(e) any other factors that it considers relevant.

(3) Within 30 days after issuance of the report pursuant to 75-20-216 for a facility defined in 75-20-104(10)(c), the department shall approve a facility as proposed or as modified or an alternative to a proposed facility if the department finds and determines:

(a) that the facility or alternative incorporates all reasonable, cost-effective mitigation of significant environmental impacts; and

(b) that unmitigated impacts, including those that cannot be reasonably quantified or valued in monetary terms, will not result in:

(i) a violation of a law or standard that protects the environment; or

(ii) a violation of a law or standard that protects the public health and safety.

(4) For facilities defined in 75-20-104, if the department cannot make the findings required in this section, it shall deny the certificate.

History: En. Sec. 10, Ch. 327, L. 1973; amd. Sec. 10, Ch. 494, L. 1975; R.C.M. 1947, 70-810(1), (3), (4); amd. Sec. 1, Ch. 69, L. 1979; amd. Sec. 15, Ch. 676, L. 1979; amd. Sec. 5, Ch. 312, L. 1987; amd. Sec. 227, Ch. 418, L. 1995; amd. Sec. 8, Ch. 583, L. 1995; amd. Sec. 15, Ch. 329, L. 1997; amd. Sec. 10, Ch. 293, L. 2001; amd. Sec. 122, Ch. 114, L. 2003; amd. Sec. 13, Ch. 217, L. 2003; amd. Sec. 2, Ch. 382, L. 2011; amd. Sec. 6, Ch. 447, L. 2019; amd. Sec. 10, Ch. 13, L. 2021; amd. Sec. 1, Ch. 451, L. 2023.

Cross-References

Pipeline carriers, Title 69, ch. 13.

75-20-302. Conditions imposed. (1) If the department determines that the location of all or a part of the proposed facility should be modified, it may condition its certificate upon the modification, provided that the department consulted the applicant and the persons residing in the area affected by the modification have been given reasonable notice of the modification.

(2) The department may require the applicant to post performance bonds to guarantee successful reclamation and revegetation of the project area.

(3) For a common carrier pipeline as described in 69-13-101, the department shall condition a certificate to provide that for any land, rights-of-way, or easements, the location of any heritage properties or paleontological remains on or beneath land, rights-of-way, or easements for the common carrier pipeline is confidential and may not be disclosed.

(4) For purposes of this section, the following definitions apply:

(a) "Heritage property" has the meaning provided in 22-3-421.

(b) "Paleontological remains" has the meaning provided in 22-3-421.

History: En. Sec. 10, Ch. 327, L. 1973; amd. Sec. 10, Ch. 494, L. 1975; R.C.M. 1947, 70-810(2); amd. Sec. 16, Ch. 676, L. 1979; amd. Sec. 1, Ch. 155, L. 1985; amd. Sec. 228, Ch. 418, L. 1995; amd. Sec. 541, Ch. 546, L. 1995; amd. Sec. 16, Ch. 329, L. 1997; amd. Sec. 3, Ch. 280, L. 2017; amd. Sec. 2, Ch. 296, L. 2017.

75-20-303. Opinion issued with decision — contents. (1) In rendering a decision on an application for a certificate, the department shall issue an opinion stating its reasons for the action taken.

(2) If the department has found that any regional or local law or regulation that would be otherwise applicable is unreasonably restrictive, it shall state in its opinion the reasons that it is unreasonably restrictive.

(3) A certificate issued by the department must include the following:

(a) an environmental evaluation statement related to the facility being certified. The statement must include but is not limited to analysis of the following information:

(i) the environmental impact of the proposed facility; and

(ii) any adverse environmental effects that cannot be avoided by issuance of the certificate;

(b) a plan for monitoring environmental effects of the proposed facility;

(c) a plan for monitoring the certified facility site between the time of certification and completion of construction;

(d) a time limit as provided in subsection (4);

(e) a statement confirming that notice was provided pursuant to subsection (5); and

(f) a statement signed by the applicant showing agreement to comply with the requirements of this chapter and the conditions of the certificate.

(4) (a) The department shall issue as part of the certificate the following time limits:

(i) For a facility as defined in 75-20-104(10)(a) that is more than 30 miles in length and for a facility defined in 75-20-104(10)(b), construction must be completed within 10 years.

(ii) For a facility as defined in 75-20-104(10)(a) that is 30 miles or less in length, construction must be completed within 5 years.

(iii) For a facility as defined in 75-20-104(10)(c), construction must begin within 6 years and continue with due diligence in accordance with preliminary construction plans established in the certificate.

(b) Unless extended, a certificate lapses and is void if the facility is not constructed or if construction of the facility is not commenced within the time limits provided in this section.

(c) The time limit may be extended for a reasonable period upon a showing by the applicant to the department that a good faith effort is being undertaken to complete construction under subsections (4)(a)(i) and (4)(a)(ii). Under this subsection, a good faith effort includes the process of acquiring any necessary state or federal permit or certificate for the facility and the process of judicial review of a permit or certificate.

(d) Construction may begin immediately upon issuance of a certificate unless the department finds that there is substantial and convincing evidence that a delay in the commencement of construction is necessary and should be established for a particular facility.

(5) (a) (i) Except as provided in subsection (5)(a)(ii), for a facility defined in 75-20-104(10)(a) and (10)(b), the environmental review conducted pursuant to Title 75, chapter 1, parts 1 through 3, prepared by the department must designate a 500-foot-wide facility siting corridor along the facility route.

(ii) Prior to preparation of the environmental review or the draft environmental impact statement, the department shall consult the applicant and, in a manner determined by rule, landowners and identify areas in which a corridor considered in the environmental review document should be more or less than 500 feet wide. The corridor width may not be narrower than the applicant's right-of-way. For each area in which the corridor is more or less than 500 feet in width, the department shall provide a written justification. The department may not modify a corridor after issuance of the final environmental review document.

(b) The department shall provide written notice of the availability of each environmental review document to each owner of property within a corridor. No more than 60 days prior to the availability of each environmental review document, the names and addresses of the property owners must be obtained from the property tax rolls of the county where the property is located. Except as provided in subsection (5)(c), the notice must:

(i) be delivered personally or by first-class mail. If delivered personally, the property owner shall sign a receipt verifying that the property owner received the statement.

(ii) inform the property owner that the property owner's property is located within a corridor;

(iii) inform the property owner about how a copy of the environmental review document may be obtained; and

(iv) inform the property owner of the property owner's rights under this chapter concerning the location of the facility and that more information concerning those rights may be obtained from the department.

(c) If there is more than one name listed on the property tax rolls for a single property, the notice must be mailed to the first listed property owner at the address on the property tax rolls.

(d) By mailing the notice as provided in subsection (5)(c), the notice requirements in subsection (5)(b) are satisfied.

(6) (a) A certificate holder may submit an adjustment of the location of a facility outside the approved facility siting corridor to the department. The adjustment must be accompanied by the written agreement of the affected property owner and all contiguous property owners that would be affected. The submission must include a map showing the approved facility siting corridor and the proposed adjustment. At the time of submission to the department, the adjustment must be accompanied by a copy of a legal notice published in a newspaper of general circulation in the area of the adjustment. The legal notice must specify that public comments on the adjustment may be submitted to the department within 10 days of the publication date of the notice.

(b) The certificate holder may construct the facility as described in the submission unless the department notifies the certificate holder within 15 days of the submission that the department has determined that:

(i) the adjustment would change the basis of any finding required under 75-20-301 to the extent that the department would have selected a different siting corridor for the facility; or

(ii) the adjustment would materially increase unmitigated adverse impacts.

(c) An adjustment pursuant to subsection (6)(a) is not subject to:

(i) Title 75, chapter 1, part 2;

(ii) a certificate amendment under 75-20-219; or

(iii) a board review under 75-20-223.

(d) (i) For each facility, the department shall maintain a list of persons who requested to receive electronic notice of any adjustment submitted pursuant to this subsection (6).

(ii) Upon receipt of a submitted adjustment, the department shall:

(A) post information about the adjustment on the department's website; and

(B) electronically notify each person identified in subsection (6)(d)(i) of the adjustment and where information about the adjustment may be viewed.

History: En. Sec. 11, Ch. 327, L. 1973; amd. Sec. 11, Ch. 494, L. 1975; R.C.M. 1947, 70-811(1), (2); amd. Sec. 1, Ch. 120, L. 1979; amd. Sec. 4, Ch. 239, L. 1983; amd. Sec. 2, Ch. 155, L. 1985; amd. Sec. 11, Ch. 573, L. 1985; amd. Sec. 3, Ch. 591, L. 1985; amd. Sec. 229, Ch. 418, L. 1995; amd. Sec. 542, Ch. 546, L. 1995; amd. Sec. 9, Ch. 583, L. 1995; amd. Sec. 17, Ch. 329, L. 1997; amd. Sec. 11, Ch. 293, L. 2001; amd. Sec. 14, Ch. 217, L. 2003; amd. Sec. 3, Ch. 382, L. 2011; amd. Sec. 1, Ch. 230, L. 2013; amd. Sec. 4, Ch. 280, L. 2017; amd. Sec. 7, Ch. 447, L. 2019; amd. Sec. 11, Ch. 13, L. 2021.

Cross-References

Montana Administrative Procedure Act — judicial review, Title 2, ch. 4, part 7.

Pipeline carriers, Title 69, ch. 13.

75-20-304. Waiver of provisions of certification proceedings. (1) The department may waive compliance with any of the provisions of 75-20-216 and this part if the applicant makes a clear and convincing showing to the department at a public hearing that an immediate, urgent need for a facility exists and that the applicant did not have knowledge that the need for the facility existed sufficiently in advance to fully comply with the provisions of 75-20-216 and this part.

(2) The department may waive compliance with any of the provisions of this chapter upon receipt of notice by a person subject to this chapter that a facility or associated facility has been damaged or destroyed as a result of fire, flood, or other natural disaster or as the result of insurrection, war, or other civil disorder and there exists an immediate need for construction of a new facility or associated facility or the relocation of a previously existing facility or associated facility in order to promote the public welfare.

(3) The department shall waive compliance with the requirements of 75-20-301(1)(c), (2)(b), and (2)(c) and the requirements of 75-20-211(1)(a)(iii) and (1)(a)(iv) and 75-20-216(3) relating to consideration of alternative sites if the applicant makes a clear and convincing showing to the department at a public hearing that:

(a) a proposed facility will be constructed in a county where a single employer within the county has permanently curtailed or ceased operations, causing a loss of 250 or more permanent jobs within 2 years at the employer's operations within the preceding 10-year period;

(b) the county and municipal governing bodies in whose jurisdiction the facility is proposed to be located support by resolution the waiver;

(c) the proposed facility will be constructed within a 15-mile radius of the operations that have ceased or been curtailed; and

(d) the proposed facility will have a beneficial effect on the economy of the county in which the facility is proposed to be located.

(4) The waiver provided for in subsection (3) applies only to permanent job losses by a single employer. The waiver provided for in subsection (3) does not apply to jobs of a temporary or seasonal nature, including but not limited to construction jobs or job losses during labor disputes.

(5) The waiver provided for in subsection (3) does not apply to consideration of alternatives or minimum adverse environmental impact for a facility defined in 75-20-104(10)(a) or (10)(b) or for an associated facility defined in 75-20-104(3).

(6) The applicant shall pay all expenses required to process and conduct a hearing on a waiver request under subsection (3). However, any payments made under this subsection must be credited toward the fee paid under 75-20-215 to the extent that the data or evidence presented at the hearing or the decision of the department under subsection (3) can be used in making a certification decision under this chapter.

(7) The department may grant only one waiver under subsections (3) and (4) for each permanent loss of jobs as defined in subsection (3)(a).

History: En. Sec. 11, Ch. 327, L. 1973; amd. Sec. 11, Ch. 494, L. 1975; R.C.M. 1947, 70-811(3), (4); amd. Sec. 17, Ch. 676, L. 1979; amd. Sec. 7, Ch. 539, L. 1981; amd. Sec. 6, Ch. 312, L. 1987; amd. Sec. 9, Ch. 157, L. 1993; amd. Sec. 230, Ch. 418, L. 1995; amd. Sec. 543, Ch. 546, L. 1995; amd. Sec. 273, Ch. 42, L. 1997; amd. Sec. 18, Ch. 329, L. 1997; amd. Sec. 12, Ch. 293, L. 2001; amd. Sec. 8, Ch. 447, L. 2019; amd. Sec. 12, Ch. 13, L. 2021.

Part 4
Postcertification and Legal Responsibilities

75-20-401. Additional requirements by other governmental agencies not permitted after issuance of certificate — exceptions — venue for challenging certificate issuance. (1) Notwithstanding any other law, a state or regional agency or municipality or other local government may not require any approval, consent, permit, certificate, or other condition for the construction, operation, or maintenance of a facility authorized by a certificate issued pursuant to this chapter, except that the department and board retain the authority that they have or may be granted to determine compliance of the proposed facility with state and federal standards and implementation plans for air and water quality and to enforce those standards.

(2) This chapter does not prevent the application of state laws for the protection of employees engaged in the construction, operation, or maintenance of a facility.

(3) A judicial challenge to a certificate issued pursuant to this chapter by a party other than the certificate holder or applicant must include the party to whom the certificate was issued as provided in this chapter unless otherwise agreed to by the certificate holder or applicant. All judicial challenges of certificates for projects with a project cost, as determined by the court, of more than $1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action.

(4) An action to challenge the issuance of a certificate pursuant to this chapter must be brought in the county in which the activity authorized by the certificate will occur. If an activity will occur in more than one county, the action may be brought in any of the counties in which the activity will occur.

History: En. Sec. 17, Ch. 327, L. 1973; amd. Sec. 17, Ch. 494, L. 1975; R.C.M. 1947, 70-817; amd. Sec. 18, Ch. 676, L. 1979; amd. Sec. 231, Ch. 418, L. 1995; amd. Sec. 23, Ch. 361, L. 2003; amd. Sec. 10, Ch. 337, L. 2005.

75-20-402. Monitoring. The department shall monitor the operations of all certificated facilities for ensuring continuing compliance with this chapter and certificates issued under this chapter and for discovering and preventing noncompliance with this chapter and the certificates. The applicant shall pay all expenses related to the monitoring plan established in 75-20-303(3)(b) or (3)(c) to the extent federal funds available for the facility, as determined by the department, have not been provided for those purposes.

History: En. Sec. 20, Ch. 327, L. 1973; amd. Sec. 4, Ch. 268, L. 1974; amd. Sec. 20, Ch. 494, L. 1975; R.C.M. 1947, 70-820(2); amd. Sec. 19, Ch. 676, L. 1979; amd. Sec. 5, Ch. 591, L. 1985; amd. Sec. 232, Ch. 418, L. 1995; amd. Sec. 19, Ch. 329, L. 1997.

75-20-403. Revocation or suspension of certificate. Following notice and an opportunity for a hearing, a certificate may be revoked or suspended by the department:

(1) for any material false statement in the application or in accompanying statements or studies required of the applicant if a true statement would have warranted the department's refusal to grant a certificate;

(2) for failure to maintain safety standards or to comply with the terms or conditions of the certificate; or

(3) for violation of any provision of this chapter, the rules issued under this chapter, or orders of the department.

History: En. Sec. 18, Ch. 327, L. 1973; amd. Sec. 18, Ch. 494, L. 1975; R.C.M. 1947, 70-818(1); amd. Sec. 2, Ch. 128, L. 1985; amd. Sec. 20, Ch. 329, L. 1997.

Cross-References

Montana Administrative Procedure Act — contested cases, Title 2, ch. 4, part 6.

75-20-404. Enforcement of chapter by residents. (1) A resident of this state with knowledge that a requirement of this chapter or a rule adopted under it is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that must state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed under the law of perjury.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the resident may bring an action of mandamus in the district court of the first judicial district of this state, in and for the county of Lewis and Clark. If the court finds that a requirement of this chapter or a rule adopted under it is not being enforced, the court may order the public officer or employee whose duty it is to enforce the requirement or rule to perform the officer's or employee's duties. If the public officer or public employee fails to do so, the public officer or employee must be held in contempt of court and is subject to the penalties provided by law.

History: En. Sec. 19, Ch. 327, L. 1973; amd. Sec. 19, Ch. 494, L. 1975; R.C.M. 1947, 70-819(1), (2); amd. Sec. 2507, Ch. 56, L. 2009.

Cross-References

Mandamus, Title 27, ch. 26.
Perjury, 45-7-201.

75-20-405. Action to recover damages to water supply. An owner of an interest in real property who obtains all or part of the owner's supply of water for domestic, agricultural, industrial, or other legitimate use from a surface or underground source may sue a person to recover damages for contamination, diminution, or interruption of the water supply proximately resulting from the operation of a facility. The remedies enumerated in this section do not exclude the use of any other remedy that may be available under the laws of the state.

History: En. Sec. 19, Ch. 327, L. 1973; amd. Sec. 19, Ch. 494, L. 1975; R.C.M. 1947, 70-819(3); amd. Sec. 2508, Ch. 56, L. 2009.

Cross-References

Compensatory damages — right to, 27-1-202.
Consequential damages, 27-1-203.
Punitive damages — breach of obligation, 27-1-221, 27-1-303.
Actions by parties other than state — water quality, 75-5-636.
Adjudication — water rights, Title 85, ch. 2, part 2.

75-20-406. Judicial review of decisions. (1) A person aggrieved by the final decision of the department or board on an application for a certificate may obtain judicial review of that decision by the filing of a petition in a state district court of competent jurisdiction. A challenge to the issuance of a certificate must be brought in the county in which the activity authorized by the certificate will occur. If an activity will occur in more than one county, the action may be brought in any of the counties in which the activity will occur.

(2) The judicial review procedure is the procedure for contested cases under the Montana Administrative Procedure Act.

(3) A judicial challenge to a certificate issued pursuant to this chapter by a party other than the certificate holder or applicant must include the party to whom the certificate was issued as provided in this chapter unless otherwise agreed to by the certificate holder or applicant. All judicial challenges of certificates for projects with a project cost, as determined by the court, of more than $1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action.

History: En. Sec. 12, Ch. 327, L. 1973; amd. Sec. 12, Ch. 494, L. 1975; R.C.M. 1947, 70-812; amd. Sec. 20, Ch. 676, L. 1979; amd. Sec. 8, Ch. 539, L. 1981; amd. Sec. 233, Ch. 418, L. 1995; amd. Sec. 21, Ch. 329, L. 1997; amd. Sec. 13, Ch. 293, L. 2001; amd. Sec. 24, Ch. 361, L. 2003; amd. Sec. 11, Ch. 337, L. 2005; amd. Sec. 72, Ch. 324, L. 2021.

Cross-References

Montana Administrative Procedure Act — judicial review, Title 2, ch. 4, part 7.

75-20-407. Jurisdiction of courts restricted. Except as expressly set forth in 75-20-401, 75-20-406, and 75-20-408, no court of this state has jurisdiction to hear or determine any issue, case, or controversy concerning any matter which was or could have been determined in a proceeding before the board or department under this chapter or to stop or delay the construction, operation, or maintenance of a facility, except to enforce compliance with this chapter or the provisions of a certificate issued pursuant to 75-20-404 and 75-20-405 or 75-20-408.

History: En. Sec. 13, Ch. 327, L. 1973; amd. Sec. 13, Ch. 494, L. 1975; R.C.M. 1947, 70-813; amd. Sec. 73, Ch. 324, L. 2021.

75-20-408. Penalties for violation of chapter — civil actions to enforce. (1) (a) Whoever commences to construct or operate a facility without first obtaining a certificate required under 75-20-201 or a waiver of the certificate under 75-20-304(2) or, having first obtained a certificate, constructs, operates, or maintains a facility not in compliance with the certificate or violates any other provision of this chapter or any rule or order adopted under this chapter or knowingly submits false information in any report, 10-year plan, or application required by this chapter or rule or order adopted under this chapter or causes any of the aforementioned acts to occur is liable for a civil penalty of not more than $10,000 for each violation. Penalties assessed under this section must be determined in accordance with the penalty factors in 75-1-1001.

(b) Each day of a continuing violation constitutes a separate offense.

(c) Penalties are recoverable in an action brought by the department. The action must be brought in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.

(2) Whoever purposely or knowingly violates subsection (1) shall be fined not more than $10,000 for each violation or imprisoned for not more than 1 year, or both. Each day of a continuing violation constitutes a separate offense.

(3) In addition to any penalty provided in subsection (1) or (2), whenever the department determines that a person is violating or is about to violate any of the provisions of this section, it may bring a civil action on behalf of the state in the district court of the first judicial district of Montana, if mutually agreed on by the parties in the action, or in the district court of the county in which the violation occurred or imminent violation will occur, for injunctive or other appropriate relief against the violation and to enforce this chapter or a certificate issued under this chapter. Upon a proper showing, a permanent or preliminary injunction or temporary restraining order must be granted without bond.

(4) All fines and penalties collected must be deposited in the state special revenue fund for the use of the department in administering this chapter.

History: En. Sec. 21, Ch. 327, L. 1973; amd. Sec. 2, Ch. 270 L. 1975; amd. Sec. 21, Ch. 494, L. 1975; R.C.M. 1947, 70-821; amd. Sec. 16, Ch. 68, L. 1979; amd. Sec. 21, Ch. 676, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 22, Ch. 487, L. 2005.

Cross-References

Injunctions, Title 27, ch. 19.

75-20-409. Optional annual installments for location of facility on landowner's property. A landowner upon whose land a facility is proposed to be located has the option of receiving any negotiated settlement for use of the landowner's land, if and when the land is used for a facility, by easement, right-of-way, or other legal conveyance in either a lump sum or in not more than five consecutive annual installments.

History: En. Sec. 1, Ch. 71, L. 1979; amd. Sec. 2509, Ch. 56, L. 2009.

Cross-References

Servitudes and easements, Title 70, ch. 17.

75-20-410. Order not stayed by appeal — stay or suspension by court — limitations. Notwithstanding any contrary provision in the law, the pendency of an appeal from a board order does not automatically stay or suspend the operation of the order. During the pendency of the appeal, the court may upon motion by one of the parties stay or suspend, in whole or in part, the operation of the board's orders on terms the court considers just. The court's action must be in accordance with the practice of courts exercising equity jurisdiction, subject to the following limitations:

(1) No stay may be granted without notice to the parties and an opportunity to be heard by the court.

(2) No board order may be stayed or suspended without finding that irreparable damage would otherwise result to the party seeking the stay or suspension, and any other stay or suspension of a board order must specify the nature of the damage.

History: En. Sec. 24, Ch. 676, L. 1979.

75-20-411. Surety bond — other security. If an order of the board is stayed or suspended, the court may require a bond with good and sufficient surety conditioned that the party petitioning for review answer for all damages caused by the delay in enforcing the order of the board except that the cost of the bond is not chargeable to the applicant as part of the fee. If the party petitioning for review prevails upon final resolution of an appeal, the party does not forfeit bond nor is the party responsible for damages caused by delay.

History: En. Sec. 25, Ch. 676, L. 1979; amd. Sec. 2510, Ch. 56, L. 2009.

Cross-References

Guaranty, indemnity, and suretyship, Title 28, ch. 11.

Part 5
Long-Range Plans
(Repealed)

75-20-501. Repealed. Sec. 24, Ch. 329, L. 1997.

History: En. Sec. 14, Ch. 327, L. 1973; amd. Sec. 40, Ch. 213, L. 1975; amd. Sec. 14, Ch. 494, L. 1975; R.C.M. 1947, 70-814; amd. Sec. 17, Ch. 68, L. 1979; amd. Sec. 3, Ch. 553, L. 1979; amd. Sec. 22, Ch. 676, L. 1979; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 1, Ch. 116, L. 1985; amd. Sec. 6, Ch. 591, L. 1985; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 10, Ch. 157, L. 1993; amd. Sec. 234, Ch. 418, L. 1995.

75-20-502. Repealed. Sec. 13, Ch. 583, L. 1995.

History: En. Sec. 15, Ch. 327, L. 1973; amd. Sec. 15, Ch. 494, L. 1975; R.C.M. 1947, 70-815.

75-20-503. Repealed. Sec. 24, Ch. 329, L. 1997.

History: En. Sec. 16, Ch. 327, L. 1973; amd. Sec. 16, Ch. 494, L. 1975; R.C.M. 1947, 70-816; amd. Sec. 2, Ch. 69, L. 1979; amd. Sec. 23, Ch. 676, L. 1979.

Parts 6 through 9 reserved

Part 10
Geothermal Exploration

75-20-1001. Geothermal exploration — notification of department. The department shall adopt rules requiring every person who proposes to gather geological data by boring of test holes or other underground exploration, investigation, or experimentation related to the possible future development of a facility employing geothermal resources to comply with the following requirements:

(1) notify the department of the proposed action;

(2) submit to the department a description of the area involved;

(3) submit to the department a statement of the proposed activities to be conducted and the methods to be utilized;

(4) submit to the department geological data reports at such times as may be required by the rules; and

(5) submit such other information as the department may require in the rules.

History: En. Sec. 20, Ch. 327, L. 1973; amd. Sec. 4, Ch. 268, L. 1974; amd. Sec. 20, Ch. 494, L. 1975; R.C.M. 1947, 70-820(3); amd. Sec. 74, Ch. 324, L. 2021.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

Injury caused by geothermal exploration — statute of limitations, 27-2-303.

Part 11
Energy Conversion Facility
(Repealed)

75-20-1101. Repealed. Sec. 28, Ch. 676, L. 1979.

History: En. 70-825 by Sec. 1, Ch. 517, L. 1975; R.C.M. 1947, 70-825.

75-20-1102. Repealed. Sec. 28, Ch. 676, L. 1979.

History: En. 70-826 by Sec. 2, Ch. 517, L. 1975; R.C.M. 1947, 70-826.

75-20-1103. Repealed. Sec. 28, Ch. 676, L. 1979.

History: En. 70-827 by Sec. 3, Ch. 517, L. 1975; R.C.M. 1947, 70-827.

75-20-1104. Repealed. Sec. 28, Ch. 676, L. 1979.

History: En. 70-829 by Sec. 5, Ch. 517, L. 1975; R.C.M. 1947, 70-829.

75-20-1105. Repealed. Sec. 28, Ch. 676, L. 1979.

History: En. 70-828 by Sec. 4, Ch. 517, L. 1975; R.C.M. 1947, 70-828.

Part 12
Nuclear Energy Conversion
(Repealed)

75-20-1201. Repealed. Sec. 6, Ch. 409, L. 2021.

History: En. Sec. 1, I.M. 80, app. Nov. 7, 1978.

75-20-1202. Repealed. Sec. 6, Ch. 409, L. 2021.

History: En. Sec. 2, I.M. 80, app. Nov. 7, 1978; amd. Sec. 12, Ch. 573, L. 1985; amd. Sec. 235, Ch. 418, L. 1995; amd. Sec. 544, Ch. 546, L. 1995; amd. Sec. 22, Ch. 329, L. 1997; amd. Sec. 9, Ch. 447, L. 2019.

75-20-1203. Repealed. Sec. 6, Ch. 409, L. 2021.

History: En. Sec. 4, I.M. 80, app. Nov. 7, 1978.

75-20-1204. Repealed. Sec. 6, Ch. 409, L. 2021.

History: En. Sec. 5, I.M. 80, app. Nov. 7, 1978.

75-20-1205. Repealed. Sec. 6, Ch. 409, L. 2021.

History: En. Sec. 6, I.M. 80, app. Nov. 7, 1978; amd. Sec. 7, Ch. 312, L. 1987; amd. Sec. 23, Ch. 329, L. 1997.

Part 13
Nuclear Fuel Storage Facilities

Part Compiler's Comments

Effective Date: Section 5, Ch. 700, L. 2025, provided that this part is effective on passage and approval. Approved May 13, 2025.

75-20-1301 reserved.

75-20-1302. Legislative approval of siting of spent nuclear fuel storage facilities — conditions — definition. (1) The legislature authorizes the siting of temporary spent nuclear fuel storage facilities within the state. A facility is authorized if:

(a) the facility is operated on the site of a nuclear power generating facility and stores spent nuclear fuel produced by a nuclear power generating facility operating within the state;

(b) the facility has received a state recommendation from the department of environmental quality, pursuant to 75-20-204; and

(c) the facility has received a license to construct and operate from the federal nuclear regulatory commission.

(2) For the purposes of this section, "spent nuclear fuel" means nuclear fuel that has been used in a reactor and is no longer able to produce enough energy to sustain a reaction.

History: En. Sec. 1, Ch. 700, L. 2025.

CHAPTERS 21 THROUGH 24
RESERVED

CHAPTER 25
ALTERNATIVE ENERGY LOANS

Part 1 — General Provisions

75-25-101. Alternative energy revolving loan account.
75-25-102. Administration of revolving loan account — rulemaking authority.
75-25-103. Outcome measures.

Part 1
General Provisions

75-25-101. Alternative energy revolving loan account. (1) There is a special revenue account called the alternative energy revolving loan account to the credit of the department of environmental quality.

(2) The alternative energy revolving loan account consists of money deposited into the account from air quality penalties from 75-2-401 and 75-2-413 and money from any other source. Any interest earned by the account and any interest that is generated from a loan repayment must be deposited into the account and used to sustain the program.

(3) Funds from the alternative energy revolving loan account may be used to provide loans to individuals, small businesses, units of local government, units of the university system, and nonprofit organizations for the purpose of building alternative energy systems, as defined in 15-32-102:

(a) to generate energy for their own use;

(b) for net metering as defined in 69-8-103; and

(c) for capital investments by those entities for energy conservation purposes, as defined in 15-32-102, when done in conjunction with an alternative energy system.

(4) The amount of a loan may not exceed $40,000, and the loan must be repaid within 10 years.

History: En. Sec. 1, Ch. 591, L. 2001; amd. Sec. 1, Ch. 110, L. 2005; amd. Sec. 40, Ch. 489, L. 2009; amd. Sec. 17, Ch. 6, Sp. L. November 2017.

75-25-102. Administration of revolving loan account — rulemaking authority. (1) The department of environmental quality shall adopt rules establishing:

(a) eligibility criteria, including criteria for defining residences, small businesses, and nonprofit organizations, criteria for defining capital investments for energy conservation purposes, ownership of the alternative energy facility, financial capacity to repay the loans, estimated return on investment in the alternative energy and energy conservation, and other matters that the department considers necessary to ensure repayment of loans and to encourage maximum use of the fund for alternative energy and net metering uses;

(b) processes and procedures for disbursing loans, including the agencies or organizations that are allowed to process the loan application for the department; and

(c) terms and conditions for the loans, including repayment schedules and interest.

(2) The department shall solicit assistance in the development and operation of the program from individuals familiar with financial services and persons knowledgeable in alternative energy systems.

(3) Administrative costs charged to the account may not exceed 10% of the total loans or $23,000 a year, whichever is greater. Legal fees and costs associated with collection of debt on principal are not considered administrative costs.

(4) The loan repayment period may not exceed 10 years. The loans must be made at a low interest rate. The department may set the interest rate at an amount that will cover its administrative costs, but the rate may not be less than 1% a year. The department may seek recovery of the amount of principal loaned in the event of default.

History: En. Sec. 2, Ch. 591, L. 2001; amd. Sec. 2, Ch. 110, L. 2005; amd. Sec. 41, Ch. 489, L. 2009.

75-25-103. Outcome measures. The department of environmental quality shall develop reasonable outcome measures by which the success of the alternative energy system loan program provided for in this part must be measured on an annual basis. Minimal outcome that must be measured includes:

(1) a loan loss ratio of under 5%;

(2) the types of alternative energy systems that provided the best overall results for residences and those for small businesses; and

(3) a determination of the amount of energy that was produced because of participation in the program.

History: En. Sec. 3, Ch. 591, L. 2001.

CHAPTER 26
WIND GENERATION AND SOLAR FACILITIES

Parts 1 and 2 reserved

Part 3 — Decommissioning

75-26-301. Definitions.
75-26-302 and 75-26-303 reserved.
75-26-304. Bond — penalty for failure to submit.
75-26-305. Decommissioning lien.
75-26-306 and 75-26-307 reserved.
75-26-308. Wind and solar decommissioning account — use of existing resources.
75-26-309. Release of bond — use of bond by department.
75-26-310. Rulemaking.

Part 4 — Wind Turbine Regulations

75-26-401 reserved.
75-26-402. Required setback for wind turbine generators.
75-26-403. Wind turbine generator deicing — requirement.

Parts 1 and 2 reserved

Part 3
Decommissioning

75-26-301. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Decommission" or "decommissioning" means:

(a) except as provided in 75-26-304(2), the removal of buildings, cabling, electrical components, roads, or any other facilities associated with a wind generation or solar facility;

(b) except as provided in 75-26-304(2), reclamation of surface lands to the previous grade and to comparable productivity in order to prevent adverse hydrologic effects; and

(c) (i) the removal of the solar facility after the end of the facility's useful life or abandonment; or

(ii) the removal of an aboveground wind turbine tower after the end of a wind generation facility's useful life or abandonment.

(3) "Department" means the department of environmental quality provided for in 2-15-3501.

(4) "Owner" means a person who owns a wind generation or solar facility used for the generation of electricity.

(5) "Person" means any individual, firm, partnership, company, association, corporation, city, town, or local governmental entity or any other state, federal, or private entity, whether organized for profit or not.

(6) "Repurposed" means having made a significant investment in an existing wind generation or solar facility to extend the useful life of the facility by more than 5 years.

(7) "Solar facility" means an installation or combination of solar panels or plates, including a canopy or array, that captures and converts solar radiation to produce electricity and includes flat plate, focusing solar collectors, or photovoltaic solar cells that:

(a) has a nameplate capacity greater than or equal to 2 megawatts; and

(b) produces electricity that is not consumed on the premises of the solar facility or on land immediately adjacent to the premises of the solar facility.

(8) "Wind generation facility" means any combination of a physically connected wind turbine or turbines, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power from wind and that have a nameplate capacity greater than or equal to 25 megawatts.

History: En. Sec. 1, Ch. 247, L. 2017; amd. Sec. 1, Ch. 304, L. 2019.

75-26-302 and 75-26-303 reserved.

75-26-304. Bond — penalty for failure to submit. (1) (a) Within 12 months of a wind generation facility or solar facility commencing commercial operation, the owner of a wind generation facility or solar facility operating in Montana shall:

(i) notify the department in writing of the date that the facility began commercial operation;

(ii) subject to subsection (2), submit a plan for decommissioning the facility to the department, including the scope of work to be completed and cost estimates for completion;

(iii) submit to the department an abstract of any leasing agreement between a facility owner and a landowner on whose property the facility is sited; and

(iv) provide the department with any other necessary information in accordance with this part and rules adopted pursuant to this part in order for the department to determine bond requirements in accordance with this section.

(b) Except as provided in subsection (1)(c), if a wind generation facility or solar facility commenced commercial operation before May 7, 2019, the owner of the facility shall submit to the department the information required in subsection (1)(a) on or before July 1, 2020.

(c) If a wind generation facility commenced commercial operation before May 7, 2019, and the owner of the facility submitted information required by subsection (1)(a) on or before July 1, 2018, the owner is not required to resubmit the information.

(d) Within 90 days of a wind generation facility or solar facility commencing construction, the owner of the wind generation facility or solar facility shall notify the department that construction of the facility has commenced.

(2) If a property owner and the owner of a wind generation facility or solar facility reach an agreement concerning alternative restoration of buildings, cabling, electrical components, roads, or any other associated facilities, instead of removal, or alternative plans for reclamation of surface lands, or both, decommissioning does not include removal, plans for reclamation, or both, as long as a copy of the agreement is provided to the department.

(3) (a) If necessary, the department may modify a plan for decommissioning to determine bond requirements in accordance with subsections (4) through (8).

(b) The department shall notify the owner of the facility of any modification. The owner of the wind generation facility or solar facility may appeal a modification by the department of a plan for decommissioning to the board within 60 days of receiving notice of the modification to the plan.

(4) (a) In determining the amount of a bond required in accordance with subsection (6), the department shall consider:

(i) the character and nature of the site where the wind generation facility or solar facility is located; and

(ii) the current market salvage value of the wind generation facility or solar facility, as determined by an independent evaluator.

(b) The amount of the decommissioning bond a facility owner shall pay is 100% of the amount calculated by the department pursuant to subsections (3) through (5) and (12).

(5) Except as provided in subsections (7) and (8) and in accordance with subsection (6), the owner of a wind generation facility or solar facility shall submit to the department a bond payable to the state of Montana in a form acceptable by the department and in the sum determined by the department, conditioned on the faithful decommissioning of the wind generation facility or solar facility.

(6) (a) Except as provided in subsections (7) and (8), if a wind generation facility or solar facility commenced commercial operation on or before January 1, 2007, the owner shall submit the decommissioning bond to the department prior to the conclusion of the 16th year of operation of the wind generation facility or solar facility.

(b) Except as provided in subsections (6)(d), (7), and (8), if a wind generation facility or solar facility commenced commercial operation after January 1, 2007, but before October 1, 2025, the owner shall submit the decommissioning bond to the department prior to the conclusion of the 15th year of operation of the wind generation facility or solar facility.

(c) Except as provided in subsections (6)(d), (7), and (8), if a wind generation facility or solar facility commenced commercial operation on or after October 1, 2025, the owner shall submit the decommissioning bond to the department prior to the conclusion of the 12th year of operation of the wind generation facility or solar facility.

(d) Except as provided in subsections (7) and (8), for a wind generation facility or solar facility with assets that are operating, constructed, or partially constructed, if a property lease for the facility terminates prior to the conclusion of the 12th year of operation of the facility, the owner shall submit the decommissioning bond to the department 1 year prior to the property lease termination date.

(7) If a wind generation facility or solar facility is repurposed, as determined by the department in consultation with the owner, the owner is not required to provide a bond, and any existing bond must be released until the repurposed facility reaches its 5th year of operation.

(8) An owner of a wind generation facility or solar facility is exempt from the requirements of subsection (6) if:

(a) for that portion of a wind generation facility or solar facility, the owner has posted a decommissioning bond with a federal agency, with the department of natural resources and conservation for the lease of state land, or with a tribal, county, or local government;

(b) the owner furnishes documents to the department that prove the owner is responsible under the terms and conditions of a lease agreement to provide private bonding. The parties shall agree that release of the agreed on bond is subject to the approval of the department on completion of reclamation.

(c) the private landowner on whose land the wind generation facility or solar facility is located owns a 10% or greater share of the wind generation facility or solar facility, as determined by the department; or

(d) the facility:

(i) commenced commercial operation on or before January 1, 2018, is a wind generation facility, and has less than 25 megawatts in nameplate capacity; or

(ii) commenced commercial operation on or before January 1, 2020, is a solar facility, and has less than 2 megawatts in nameplate capacity.

(9) (a) If the owner of the wind generation facility or solar facility fails to submit a decommissioning bond acceptable to the department within the timeframe required by this section, the department shall provide notice to the facility owner. If after 30 days the owner of a wind generation facility or solar facility has not submitted a decommissioning bond, the department may assess an administrative penalty of not more than $1,500 and an additional administrative penalty of not more than $1,500 for each day the failure to submit the decommissioning bond continues.

(b) The owner of the wind generation facility or solar facility may appeal the department's penalty assessment to the board within 20 days after receipt of written notice of the penalty. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection (9).

(10) If the owner of a wind generation facility or solar facility transfers ownership of the facility to a successor owner, the first owner's bond must be released after 90 days. The new owner shall submit any necessary bond within 90 days after transfer of ownership or be subject to penalties in accordance with this section.

(11) Once every 5 years after a facility is bonded, the owner of a wind generation facility or solar facility may apply to the department for a reduction in the amount of the decommissioning bond applicable to the wind energy facility or solar facility. The owner's application to the department must include a detailed description of any material changes to information considered by the department in setting the initial amount of the bond and may include an amended decommissioning plan for the department's approval.

(12) Submitting a bond in accordance with this section does not absolve the owner of a wind generation facility or solar facility from complying with applicable regulations and requirements for:

(a) areas subject to local zoning adopted under Title 76, chapter 2;

(b) military affected areas under Title 10, chapter 1, part 15; or

(c) airport affected areas under Title 67, chapter 7.

History: En. Sec. 2, Ch. 247, L. 2017; amd. Sec. 2, Ch. 304, L. 2019; amd. Sec. 1, Ch. 631, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 631, L. 2025. Amendment effective May 12, 2025.

75-26-305. Decommissioning lien. (1) For a wind generation facility or solar facility that has not submitted a bond to the department or within 30 days of abandonment of a wind generation facility or solar facility, the department shall file a lien on the generation assets of the facility in an amount not less than the estimated decommissioning costs in the decommissioning plan filed pursuant to 75-26-304 plus an annual inflationary amount determined by the department.

(2) The department shall release a lien secured pursuant to subsection (1) following the receipt and acceptance of a decommissioning bond submitted as required by 75-26-304(6)(b), (6)(c), or (6)(d).

(3) If the owner of a wind generation facility or solar facility fails to properly decommission a wind generation facility or solar facility and the owner has not commenced action to rectify deficiencies within 90 days after notice by the department, the department may foreclose on the lien. The department, through department staff, equipment, resources, and material under its control or a contract with others, may take any action necessary to decommission the wind generation facility or solar facility.

History: En. Sec. 2, Ch. 631, L. 2025.

Compiler's Comments

Effective Date: Section 4, Ch. 631, L. 2025, provided: "[This act] is effective on passage and approval." Approved May 12, 2025.

75-26-306 and 75-26-307 reserved.

75-26-308. Wind and solar decommissioning account — use of existing resources. (1) There is a wind and solar decommissioning account within the state special revenue fund established in 17-2-102. There must be paid into the account:

(a) penalties collected in accordance with 75-26-304(9);

(b) proceeds from the sale of assets secured by liens on a wind generation facility or solar facility that has been liquidated pursuant to 75-26-305(3); and

(c) interest income earned on the account.

(2) Funds in the wind and solar decommissioning account are statutorily appropriated, as provided in 17-7-502, to the department.

(3) (a) Money in the account may only be used by the department in implementing this part and rules adopted pursuant to this part.

(b) The department shall administer this part using existing resources and money in the account pursuant to subsection (1).

(4) The department shall maintain and hold bonds or other surety received by the department as authorized in 75-26-304 for use in accordance with this part.

History: En. Sec. 3, Ch. 247, L. 2017; amd. Sec. 3, Ch. 304, L. 2019; amd. Sec. 3, Ch. 631, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 631, L. 2025. Amendment effective May 12, 2025.

75-26-309. Release of bond — use of bond by department. (1) (a) Subject to subsection (1)(b), the department shall release the bond if it is satisfied that an owner has properly decommissioned a wind generation facility or solar facility in accordance with the plan required in 75-26-304.

(b) At any time, an owner of a wind generation facility or solar facility may petition the department for release of the bond, and the department shall reply with a determination within 90 days.

(2) If the owner of a wind generation facility or solar facility fails to properly decommission a wind generation facility or solar facility and has not commenced action to rectify deficiencies within 90 days after notification by the department, the department shall cause the bond to be forfeited. The department, with staff, equipment, and material under its control or by contract with others, may take any necessary actions to decommission the wind generation facility or solar facility.

History: En. Sec. 4, Ch. 247, L. 2017; amd. Sec. 4, Ch. 304, L. 2019.

75-26-310. Rulemaking. The department shall adopt rules prescribing:

(1) standards and procedures for the submission of reasonable bonds with good and sufficient surety by the owners of wind generation facilities and solar facilities;

(2) the collection of penalties in accordance with 75-26-304(9);

(3) criteria and the process for releasing a bond in accordance with 75-26-309;

(4) the department's use of a bond in the event that the owner of a wind generation facility or solar facility fails to decommission a wind generation facility or solar facility;

(5) information required by the department to determine bond requirements in accordance with 75-26-304; and

(6) any additional requirements to ensure compliance with this part.

History: En. Sec. 5, Ch. 247, L. 2017; amd. Sec. 5, Ch. 304, L. 2019.

Part 4
Wind Turbine Regulations

Part Compiler's Comments

Effective Date: Section 4, Ch. 761, L. 2025, provided that this part is effective January 1, 2026.

75-26-401 reserved.

75-26-402. *(Effective January 1, 2026)* **Required setback for wind turbine generators.** After January 1, 2026, a wind turbine generator built pursuant to a wind energy agreement as described in 70-17-406 may not be constructed if the wind turbine tower is 500 feet or more in height, as measured from the natural ground level at the base of the tower to the tip of the turbine rotor blade, if the base of the tower is located at a distance of less than 1,500 feet from an occupied residence, unless a shorter setback distance is approved by the owner of the real property.

History: En. Sec. 1, Ch. 761, L. 2025.

75-26-403. *(Effective January 1, 2026)* **Wind turbine generator deicing — requirement.** After January 1, 2026, a wind turbine generator must use commercially reasonable efforts to mitigate icing risks during an operator-controlled turbine rotor blade deicing process if the wind turbine generator is:

(1) 500 feet or more in height, as measured from the natural ground level at the base of the tower to the tip of the turbine rotor blade;

(2) constructed within an area with an ice class rating of 4 or more, as defined in international energy agency guidelines published in February 2017; and

(3) located within a distance of 1,500 feet from an occupied residence.

History: En. Sec. 2, Ch. 761, L. 2025.

TITLE 76

LAND RESOURCES AND USE

Ch.
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CHAPTER 1
PLANNING BOARDS

Part 1 — General Provisions

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Chapter Cross-References

Planned Community Development Act of 1973, Title 7, ch. 2, part 47.
Agricultural appraisal, Title 15, ch. 7, part 2.
Planning functions of Department of Commerce, 90-1-102, 90-1-103.

Part 1
General Provisions

76-1-101. Planning boards authorized. The governing body of any city or town, the governing bodies of more than one city or town, or the governing body of any county or any combination thereof may create a planning board in order to promote the orderly development of its governmental units and its environs.

History: En. Sec. 1, Ch. 246, L. 1957; amd. Sec. 1, Ch. 247, L. 1963; amd. Sec. 2, Ch. 273, L. 1971; R.C.M. 1947, 11-3801(part).

Cross-References

Building regulations — appointment of zoning commission, Title 76, ch. 2, part 3.

76-1-102. Purpose. (1) It is the object of this chapter to encourage local units of government to improve the present health, safety, convenience, and welfare of their citizens and to plan for the future development of their communities to the end that highway systems be carefully planned; that new community centers grow only with adequate highway, utility, health, educational, and recreational facilities; that the needs of agriculture, industry, and business be recognized in future growth; that residential areas provide healthy surroundings for family life; and that the growth of the community be commensurate with and promotive of the efficient and economical use of public funds.

(2) In accomplishing this objective, it is the intent of this chapter that the planning board shall serve in an advisory capacity to presently established boards and officials.

History: En. Sec. 1, Ch. 246, L. 1957; amd. Sec. 1, Ch. 247, L. 1963; amd. Sec. 2, Ch. 273, L. 1971; R.C.M. 1947, 11-3801(part).

76-1-103. Definitions. As used in this chapter, the following definitions apply:

(1) "City" includes incorporated cities and towns.

(2) "City council" means the chief legislative body of a city or incorporated town.

(3) "Governing body" or "governing bodies" means the governing body of any governmental unit represented on a planning board.

(4) "Growth policy" means a comprehensive development plan, master plan, or comprehensive plan that was adopted pursuant to this chapter before October 1, 1999, or a policy that was adopted pursuant to this chapter on or after October 1, 1999.

(5) "Land use management techniques and incentives" include but are not limited to zoning regulations, subdivision regulations, and market incentives.

(6) "Market incentives" may include but are not limited to an expedited subdivision review process authorized by 76-3-609, reductions in parking requirements, and a sliding scale of development review fees.

(7) "Mayor" means mayor of a city.

(8) "Neighborhood plan" means a plan for a geographic area within the boundaries of the jurisdictional area that addresses one or more of the elements of the growth policy in more detail.

(9) "Person" means any individual, firm, or corporation.

(10) "Planning board" means a city planning board, a county planning board, or a joint city-county planning board.

(11) "Plat" means a subdivision of land into lots, streets, and areas, marked on a map or plan, and includes replats or amended plats.

(12) "Public place" means any tract owned by the state or its subdivisions.

(13) "Streets" includes streets, avenues, boulevards, roads, lanes, alleys, and all public ways.

(14) "Utility" means any facility used in rendering service that the public has a right to demand.

History: En. Sec. 3, Ch. 246, L. 1957; amd. Sec. 2, Ch. 247, L. 1963; amd. Sec. 1, Ch. 349, L. 1973; R.C.M. 1947, 11-3803(part); amd. Sec. 1, Ch. 266, L. 1979; amd. Sec. 4, Ch. 582, L. 1999; amd. Sec. 1, Ch. 599, L. 2003; amd. Sec. 1, Ch. 455, L. 2007.

76-1-104. Procedure to establish county planning board — protest. (1) Before a county planning board may be created, the board of county commissioners shall by resolution give public notice of their intent to create such planning board and of a public hearing thereon by publication of notice of time and place of hearing on such resolution in each newspaper published in the county not less than 15 or more than 30 days prior to the date of hearing.

(2) A resolution creating a county planning board shall not be adopted by the board of county commissioners if disapproved in writing, not later than 60 days after such hearing, by a majority of the qualified electors of the county residing outside the limits of the jurisdictional area of an existing city-county planning board established pursuant to 76-1-504 through 76-1-507 and outside the incorporated limits of each city and town in the county.

History: En. Sec. 1, Ch. 246, L. 1957; amd. Sec. 1, Ch. 247, L. 1963; amd. Sec. 2, Ch. 273, L. 1971; R.C.M. 1947, 11-3801(part).

Cross-References

Publication of legal notices, Title 18, ch. 7, part 2; 18-7-411.

76-1-105. Role of county in formation of city planning board. (1) Prior to enacting an ordinance creating a city planning board, the city council shall notify in writing the county commissioners of the county in which the city is located of their intention to form a city planning board.

(2) The board of county commissioners shall elect to form a city-county planning board or to permit the city to form a city planning board and shall notify in writing the city council of its election within 30 days from receipt of notice of the city's intention to form a planning board. In the event the county commissioners so elect, the planning board to be so formed shall be a city-county planning board.

History: En. Sec. 5, Ch. 246, L. 1957; R.C.M. 1947, 11-3805.

76-1-106. Role of planning board. (1) To ensure the promotion of public health, safety, morals, convenience, or order or the general welfare and for the sake of efficiency and economy in the process of community development, if requested by the governing body, the planning board shall prepare a growth policy and shall serve in an advisory capacity to the local governing bodies establishing the planning board.

(2) The planning board may propose policies for:

(a) subdivision plats;

(b) the development of public ways, public places, public structures, and public and private utilities;

(c) the issuance of improvement location permits on platted and unplatted lands; or

(d) the laying out and development of public ways and services to platted and unplatted lands.

History: En. Sec. 28, Ch. 246, L. 1957; amd. Sec. 10, Ch. 247, L. 1963; R.C.M. 1947, 11-3828(1), (2); amd. Sec. 5, Ch. 582, L. 1999; amd. Sec. 2, Ch. 599, L. 2003.

76-1-107. Role of planning board in relation to subdivisions and plats. (1) Except as provided in subsection (2), the governing body of any city, town, or county that has formed a planning board and adopted a growth policy pursuant to this chapter and subdivision regulations pursuant to chapter 3 shall seek the advice of the appropriate planning board in all matters pertaining to the approval or disapproval of plats or subdivisions.

(2) The planning board may delegate to its staff its responsibility under subsection (1) to advise the governing body on any or all proposed minor subdivisions.

History: En. Sec. 2, Ch. 19, L. 1971; R.C.M. 1947, 11-3842.1; amd. Sec. 6, Ch. 582, L. 1999.

76-1-108. City-county planning board as a zoning commission. The city council may in its discretion require the city-county planning board to function as the zoning commission authorized under 76-2-307.

History: En. Sec. 28, Ch. 246, L. 1957; amd. Sec. 10, Ch. 247, L. 1963; R.C.M. 1947, 11-3828(3).

76-1-109. Interaction of local government and city-county planning board. The governing bodies of the city or county shall give consideration to recommendations of the city-county planning board, but the governing bodies shall not be bound by such recommendations.

History: En. Sec. 28, Ch. 246, L. 1957; amd. Sec. 10, Ch. 247, L. 1963; R.C.M. 1947, 11-3828(4).

76-1-110. Cooperation with planning board by state and local governments. Whenever the board undertakes the preparation of a growth policy, the departments and officials of state, city, county, and separate taxing units operating within lands under the jurisdiction of the board shall make available, upon the request of the board, information, documents, and plans that have been prepared or, upon the request of the board, shall provide any information that relates to the board's activity.

History: En. Sec. 29, Ch. 246, L. 1957; R.C.M. 1947, 11-3829; amd. Sec. 7, Ch. 582, L. 1999.

76-1-111. Representation of county or additional cities or towns on existing boards. (1) Any city, county, or town or any combination of cities, counties, or towns wishing to be represented upon an existing planning board may, by agreement of the governing body or bodies then represented on the board, obtain representation on the board and share in the membership duties and costs of the board upon a basis agreeable to the governing body or bodies creating the board.

(2) The membership, as well as the jurisdictional area of any board, may be increased to provide for representation and planning of any additional cities, counties, or towns seeking representation.

(3) Any city, county, or town that becomes represented upon an existing planning board pursuant to this section may appropriate funds for expenses necessary to cover the costs of representation. Subject to 15-10-420, the governing bodies of any represented city, county, or town may levy on all property that is added to the jurisdictional area of an existing board by representation a tax for planning board purposes under procedures set forth in Title 7, chapter 6, part 40.

History: En. Sec. 15, Ch. 246, L. 1957; amd. Sec. 6, Ch. 273, L. 1971; R.C.M. 1947, 11-3815; amd. Sec. 137, Ch. 584, L. 1999; amd. Sec. 189, Ch. 574, L. 2001.

76-1-112. Joint or consolidated planning boards. (1) Any existing city, county, or city-county planning board may form a joint or consolidated planning board with any other existing city, county, or city-county planning board or with any combination of these boards.

(2) The manner of combination must be by interlocal agreement of the cities, counties, and towns represented on the existing planning boards pursuant to Title 7, chapter 11, part 1.

(3) The interlocal agreement must:

(a) state the name of the combined board;

(b) specify whether a joint or combined board is formed;

(c) specify the representation, means and manner of appointment, membership duties, and manner of sharing costs of the combined board which may, subject to subsection (6), be on any basis agreeable to the governing bodies of the cities, counties, and towns represented on the existing planning boards.

(4) If a consolidated board is formed, the existing city, county, and city-county planning boards must be dissolved and the consolidated board has the rights, duties, powers, and obligations of the existing planning boards.

(5) If a joint board is formed, the existing planning boards may not be dissolved and the joint board has the rights, duties, powers, and obligations that are contained in the interlocal agreement.

(6) Membership of any city-county board formed pursuant to this section must have representation consistent with the requirements of part 2 of this chapter.

History: En. 11-3815.1 by Sec. 1, Ch. 101, L. 1975; R.C.M. 1947, 11-3815.1; amd. Sec. 1, Ch. 274, L. 1997.

76-1-113. Effect of chapter on natural resources. (1) Except as provided in subsection (2), nothing in this chapter may be considered to authorize an ordinance, resolution, or rule that would prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner thereof.

(2) The complete use, development, or recovery of a mineral by an operation that mines sand and gravel and an operation that mixes concrete or batches asphalt on a site that is located within a geographic area zoned as residential are subject to the zoning regulations adopted under Title 76, chapter 2.

History: En. Sec. 53, Ch. 246, L. 1957; amd. Sec. 6, Ch. 271, L. 1959; R.C.M. 1947, 11-3853; amd. Sec. 1, Ch. 408, L. 1991.

76-1-114. Consolidated land use boards — zoning commission, planning board, and board of adjustment. (1) The governing body of a city, county, or consolidated city-county may consolidate any combination of a planning board or planning boards as authorized in Title 76, chapter 1, a zoning commission as provided in 76-2-220 and 76-2-307, and a board of adjustment as provided in 76-2-221 and 76-2-321 into a consolidated land use board.

(2) The requirements regarding the duties and roles of a planning board as provided in Title 76, chapter 1, a zoning commission as provided in Title 76, chapter 2, parts 2 and 3, and a board of adjustment as provided in Title 76, chapter 2, parts 2 and 3, apply to a consolidated land use board.

(3) A consolidated land use board allowed under this section shall adopt bylaws that clearly define the roles and duties of a member when acting as a planning board member, a zoning commission member, or a board of adjustment member.

(4) (a) Except as provided in subsection (4)(b), a consolidated land use board allowed under this section must consist of at least five appointed citizen members that reside within the jurisdictional area of the consolidated land use board and who may be removed by the appointing authority. A vacancy on a consolidated land use board must be filled by the appointing authority.

(b) If a consolidated land use board includes the consolidation of a joint or consolidated board as allowed in 76-1-112 or a city-county planning board as allowed in 76-1-201, the consolidated land use board must consist of at least nine appointed citizen members as required in 76-1-201.

(5) The requirements provided in Title 76, chapter 1, and in Title 76, chapter 2, parts 2 and 3, regarding the number, qualification, and removal of members on a planning board, zoning commission, or board of adjustment do not apply to a consolidated land use board allowed under this section.

History: En. Sec. 1, Ch. 327, L. 2023.

Part 2
Membership

76-1-201. Membership of city-county planning board. (1) Except as provided in subsection (2), a city-county planning board consists of no fewer than nine members to be appointed as follows:

(a) two official members who reside outside the city limits but within the jurisdictional area of the city-county planning board to be appointed by the board of county commissioners, who may in the discretion of the board of county commissioners be employed by or hold public office in the county;

(b) two official members who reside within the city limits to be appointed by the city council, who may in the discretion of the city council be employed by or hold public office in the city;

(c) two citizen members who reside within the city limits to be appointed by the mayor of the city;

(d) two citizen members who reside within the jurisdictional area of the city-county planning board to be appointed by the board of county commissioners;

(e) the ninth member to be appointed by the board of supervisors of a conservation district provided for in 76-15-311 from the members or associate members of the board of supervisors, subject to approval of the members provided for in subsections (1)(a) through (1)(d).

(2) Subsection (1)(e) does not apply if there is no member or associate member of the board of supervisors of a conservation district who is able or willing to serve on the city-county planning board. In that case, the ninth member of the city-county planning board must be selected by the eight officers and citizen members pursuant to subsections (1)(a) through (1)(d), with the consent and approval of the board of county commissioners and the city council.

History: En. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965; amd. Sec. 3, Ch. 273, L. 1971; amd. Sec. 2, Ch. 349, L. 1973; R.C.M. 1947, 11-3810(part); amd. Sec. 1, Ch. 192, L. 1979; amd. Sec. 1, Ch. 509, L. 1985; amd. Sec. 1, Ch. 151, L. 2007.

76-1-202. Qualifications of citizen members of city-county planning board. (1) The citizen members of the city-county planning board shall be resident freeholders in the area over which the planning board has jurisdiction; provided, however, that at least two of such members shall be resident freeholders in the area, if any, outside the city limits over which the planning board has jurisdiction and the two members appointed by the county commissioners shall reside outside the city limits but within the jurisdictional area of the planning board.

(2) Any citizen appointee may be removed from office by a majority vote of the governing body of the governmental unit represented by such appointee.

History: (1)Ap. p. Sec. 12, Ch. 246, L. 1957; amd. Sec. 2, Ch. 271, L. 1959; amd. Sec. 5, Ch. 273, L. 1971; Sec. 11-3812, R.C.M. 1947; Ap. p. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965; amd. Sec. 3, Ch. 273, L. 1971; amd. Sec. 2, Ch. 349, L. 1973; Sec. 11-3810, R.C.M. 1947; (2)En. Sec. 13, Ch. 246, L. 1957; amd. Sec. 5, Ch. 247, L. 1963; Sec. 11-3813, R.C.M. 1947; R.C.M. 1947, 11-3810(part), 11-3812(part), 11-3813.

76-1-203. Term of members of county and city-county planning boards. The terms of the members who are officers of any governmental unit represented on the board shall be coextensive with their respective terms of office to which they have been elected or appointed; the terms of the other members shall be 2 years, except that the terms of the first members appointed shall be fixed by agreement and rule of the governing bodies represented on the board for 1 or 2 years in order that a minimum number of terms shall expire in any year.

History: En. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965; amd. Sec. 3, Ch. 273, L. 1971; amd. Sec. 2, Ch. 349, L. 1973; R.C.M. 1947, 11-3810(3).

76-1-204. Vacancies on county and city-county planning boards. (1) Vacancies occurring on the board of official members and by death or resignation of citizen members shall be filled for the unexpired term by the governing bodies having appointed them.

(2) Vacancies occurring in citizen members on the county planning board at the end of a term shall be filled by the board of county commissioners.

(3) Vacancies occurring in citizen members on the city-county planning board at the end of a term shall be filled alternately by the mayor and the board of county commissioners represented on the board, commencing with the mayor.

(4) In the event more than one city is represented on a board, the representation and appointments to be made by the respective cities and counties shall be by agreement and rule of the board.

History: En. Sec. 11, Ch. 246, L. 1957; amd. Sec. 4, Ch. 273, L. 1971; R.C.M. 1947, 11-3811.

76-1-205 through 76-1-210 reserved.

76-1-211. Membership of county planning board. (1) County planning boards consist of not less than five members appointed by the board of county commissioners. At least one member of a county planning board existing on or formed after July 1, 1973, must be a member of the governing board of a conservation district as provided for in chapter 15, an associate member of a conservation district designated by the governing board of a conservation district, or a member of a state cooperative grazing district if officers of either of the districts or the designated associate member of a conservation district reside in the county.

(2) If a city or town subsequently becomes represented on the county planning board pursuant to 76-1-111, additional members of the planning board representing the cities or towns must be appointed by the respective city councils.

History: En. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965; amd. Sec. 3, Ch. 273, L. 1971; amd. Sec. 2, Ch. 349, L. 1973; R.C.M. 1947, 11-3810(2); amd. Sec. 2, Ch. 151, L. 2007.

76-1-212. Citizen members of county planning board. (1) The citizen members of the county planning board shall be resident freeholders in the area over which the planning board has jurisdiction.

(2) Any citizen appointee may be removed from office by a majority vote of the governing body of the governmental unit represented by such appointee.

History: (1)En. Sec. 12, Ch. 246, L. 1957; amd. Sec. 2, Ch. 271, L. 1959; amd. Sec. 5, Ch. 273, L. 1971; Sec. 11-3812, R.C.M. 1947; (2)En. Sec. 13, Ch. 246, L. 1957; amd. Sec. 5, Ch. 247, L. 1963; Sec. 11-3813, R.C.M. 1947; R.C.M. 1947, 11-3812(part), 11-3813.

76-1-213 through 76-1-220 reserved.

76-1-221. Membership of city planning board. (1) A city planning board shall consist of not less than seven members to be appointed as follows:

(a) one member to be appointed by the city council from its membership;

(b) one member to be appointed by the city council, who may in the discretion of the city council be an employee or hold public office in the city or county in which the city is located;

(c) one member to be appointed by the mayor upon the designation by the county commissioners of the county in which the city is located;

(d) four citizen members to be appointed by the mayor, two of whom shall be resident freeholders within the urban area, if any, outside of the city limits over which the planning board has jurisdiction under this chapter and two of whom shall be resident freeholders within the city limits.

(2) The clerk of the city council shall certify members appointed by its body. The certificates shall be sent to and become a part of the records of the planning board. The mayor shall make similar certification for the appointment of citizen members.

History: (1)En. Sec. 4, Ch. 246, L. 1957; amd. Sec. 1, Ch. 271, L. 1959; Sec. 11-3804, R.C.M. 1947; (2)En. Sec. 7, Ch. 246, L. 1957; Sec. 11-3807, R.C.M. 1947; R.C.M. 1947, 11-3804(part), 11-3807.

76-1-222. City council member of city planning board. (1) As soon as the city council has enacted an ordinance creating a city planning board, the city council shall select a member of its body to serve on the planning board. The term of the appointed member must be coextensive with the term of office to which the member has been elected or appointed unless the council, on its first regular meeting of each year, appoints another to serve as its representative or unless the member's term is terminated as provided in this part.

(2) The city council shall fill any vacancy occurring in its respective membership on the planning board.

History: En. Sec. 6, Ch. 246, L. 1957; R.C.M. 1947, 11-3806; amd. Sec. 2511, Ch. 56, L. 2009.

76-1-223. County representative for city planning board. When a city council has enacted an ordinance creating a city planning board or when a vacancy occurs in the county's membership on the city planning board, the board of county commissioners of the county in

which the city is located shall within 45 days designate a representative of the county to the mayor of the city for appointment to the city planning board. This representative may be a member of the board of county commissioners or an officeholder or employee of the county. The mayor may not reject or refuse to appoint to the city planning board a representative designated by a board of county commissioners as provided in this section, but if the county fails to designate a representative, then the mayor may appoint as a representative of the county a person of the mayor's own choosing and at the mayor's sole discretion.

History: En. Sec. 14, Ch. 246, L. 1957; R.C.M. 1947, 11-3814; amd. Sec. 2, Ch. 266, L. 1979; amd. Sec. 1, Ch. 269, L. 2003.

76-1-224. Citizen members of city planning board. (1) The citizen members shall:

(a) be qualified by knowledge and experience in matters pertaining to the development of the city; and

(b) hold no other office in the city government.

(2) Any citizen appointee may be removed from office by a majority vote of the governing body of the city.

History: En. Secs. 8, 13, Ch. 246, L. 1957; amd. Secs. 3, 5, Ch. 247, L. 1963; R.C.M. 1947, 11-3808, 11-3813; amd. Sec. 3, Ch. 266, L. 1979.

Part 3
Organization and Administration

Part Cross-References

Right of public participation, Art. II, sec. 8, Mont. Const.; Title 2, ch. 3, part 1.
Open meeting law, Art. II, sec. 9, Mont. Const.; Title 2, ch. 3, part 2.
Expense allowances for state, 2-18-501 through 2-18-503.

76-1-301. Planning board meetings. (1) The board shall fix the time for holding regular meetings, but it shall meet at least once in the months of January, April, July, and October.

(2) Special meetings of the planning board may be called by the president or by two members upon written request to the secretary. The secretary shall send to all members, at least 2 days in advance of a special meeting, a written notice fixing the time and place of the meeting. Written notice of a special meeting is not required if the time of the special meeting has been fixed in a regular meeting or if all members are present at the special meeting.

History: En. Secs. 16, 17, Ch. 246, L. 1957; R.C.M. 1947, 11-3816, 11-3817.

76-1-302. Planning board officers. At its first regular meeting in each year, the board shall elect from its members a president and vice-president. The vice-president shall have authority to act as president of the board during the absence or disability of the president.

History: En. Sec. 21, Ch. 246, L. 1957; R.C.M. 1947, 11-3821.

76-1-303. Offices. The city or county shall provide suitable offices for the holding of meetings and the preservation of plans, maps, documents, and accounts.

History: En. Sec. 23, Ch. 246, L. 1957; R.C.M. 1947, 11-3823.

76-1-304. Quorum — official action. (1) A majority of members constitutes a quorum.

(2) An action of the planning board is not official unless a quorum is present and unless the action is authorized by a majority of the quorum at a regular or properly called special meeting.

History: En. Sec. 18, Ch. 246, L. 1957; amd. Sec. 6, Ch. 247, L. 1963; R.C.M. 1947, 11-3818; amd. Sec. 1, Ch. 172, L. 2007.

76-1-305. Administration of board. To effectuate the purpose of this chapter, the board shall have the power and duty to:

(1) exercise general supervision of and make regulations for the administration of the affairs of the board;

(2) prescribe uniform rules pertaining to investigations and hearings;

(3) keep an accurate and complete record of all departmental proceedings, record and file all bonds and contracts, and assume responsibility for the custody and preservation of all papers and documents of the board;

(4) make recommendations and an annual report to any governing bodies represented on the board concerning the operation of the board and the status of planning within its jurisdiction;

(5) prepare, publish, and distribute reports, proposed ordinances and proposed resolutions, and other material relating to the activities authorized under this chapter.

History: En. Sec. 24, Ch. 246, L. 1957; amd. Sec. 8, Ch. 247, L. 1963; R.C.M. 1947, 11-3824(part).

76-1-306. Staff — service contracts. The governing body shall assign staff employed by the governing body to assist the planning board in conducting its duties. The planning board may delegate to assigned staff the authority to perform ministerial acts in all cases except when final action of the planning board is necessary. The governing body may make contracts for special or temporary services and any professional services.

History: (1), (3)En. Sec. 22, Ch. 246, L. 1957; Sec. 11-3822, R.C.M. 1947; (2)En. Sec. 24, Ch. 246, L. 1957; amd. Sec. 8, Ch. 247, L. 1963; Sec. 11-3824, R.C.M. 1947; R.C.M. 1947, 11-3822, 11-3824(part); amd. Sec. 3, Ch. 599, L. 2003.

76-1-307. Compensation and expenses of board members and employees. (1) The members of planning boards shall receive no salary for serving on the planning board but may be reimbursed from local funds for transportation and actual expenses up to but not exceeding state transportation reimbursements and allowable expenses incurred in attending planning board meetings.

(2) When the planning board determines that it is necessary for members or employees to attend a regional or national conference or interview in another city, county, or state dealing with planning or related problems, the planning board may pay the actual expenses of the attending members or employees provided the amount has been made available in the board's appropriation.

History: (1)En. Sec. 19, Ch. 246, L. 1957; amd. Sec. 1, Ch. 291, L. 1974; Sec. 11-3819, R.C.M. 1947; (2)En. Sec. 20, Ch. 246, L. 1957; amd. Sec. 7, Ch. 247, L. 1963; Sec. 11-3820, R.C.M. 1947; R.C.M. 1947, 11-3819, 11-3820.

Part 4
Financial Administration

76-1-401. Fiscal administration. (1) To effectuate the purpose of this chapter, the board shall have the power and duty to:

(a) supervise the fiscal affairs and responsibilities of the board;

(b) prepare and submit to the governing bodies represented on the board an annual budget in the same manner as other departments of the city and county governments and shall be limited in all expenditures to the provisions made therefor by the governing bodies represented upon the board.

(2) The planning board shall have authority to expend, under regular city or county procedure as provided by law, all sums appropriated to it for purposes and activities authorized by this chapter.

History: (1)En. Sec. 24, Ch. 246, L. 1957; amd. Sec. 8, Ch. 247, L. 1963; Sec. 11-3824, R.C.M. 1947; (2)En. Sec. 26, Ch. 246, L. 1957; Sec. 11-3826, R.C.M. 1947; R.C.M. 1947, 11-3824(part), 11-3826.

76-1-402. Funding of board operation. (1) After a city council has by ordinance, a board of county commissioners has by ordinance and resolution, or a city council and board of county commissioners have by ordinance and resolution created a planning board, the governing bodies represented upon such board may appropriate funds to carry out the duties of the planning board.

(2) When a planning board has been created by agreement of more than one governmental unit, the governing bodies of the governmental units which have created the board shall agree upon the proportion of expenditures to be borne by each such unit and may budget and appropriate the funds necessary for the respective shares thus agreed upon.

History: En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(1), (2).

76-1-403. Tax levy by county for certain county planning districts authorized. When a county planning board has been established, the board of county commissioners may create a planning district that must include the property that lies outside the limits of the jurisdictional area, as established pursuant to 76-1-504 through 76-1-507 or as modified pursuant to 76-1-501 through 76-1-503 in counties where a city-county planning board has been established, as well as that property that lies outside the limits of any incorporated cities and

towns. Subject to 15-10-420, the board of county commissioners may levy a tax on the taxable value of all taxable property located within the planning district for planning board purposes, under procedures set forth in Title 7, chapter 6, part 40.

History: En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(5); amd. Sec. 4, Ch. 266, L. 1979; amd. Sec. 138, Ch. 584, L. 1999; amd. Sec. 190, Ch. 574, L. 2001.

76-1-404. Tax levy by county for city-county planning board authorized. When a city-county planning board has been established, the board of county commissioners may create a planning district that must include the property within the jurisdictional areas as established pursuant to 76-1-504 through 76-1-507 that lies outside the limits of any incorporated cities and towns. Subject to 15-10-420, the board of county commissioners may levy on the taxable value of all taxable property located within the planning district a tax for planning board purposes, under procedures set forth in Title 7, chapter 6, part 40.

History: En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(4); amd. Sec. 139, Ch. 584, L. 1999; amd. Sec. 191, Ch. 574, L. 2001.

76-1-405. Repealed. Sec. 253, Ch. 574, L. 2001.

History: En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(part); amd. Sec. 140, Ch. 584, L. 1999.

76-1-406. Tax levy by municipalities authorized. Subject to 15-10-420, the governing body of any city or town represented on a planning board may levy a tax upon the taxable value of all taxable property located within the city or town for planning board purposes, under procedures set forth in Title 7, chapter 6, part 40.

History: En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(3); amd. Sec. 5, Ch. 266, L. 1979; amd. Sec. 141, Ch. 584, L. 1999; amd. Sec. 192, Ch. 574, L. 2001.

76-1-407. Repealed. Sec. 253, Ch. 574, L. 2001.

History: En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(part); amd. Sec. 142, Ch. 584, L. 1999.

76-1-408. Acceptance and administration of gifts and donations. (1) A city, county, or city-county planning board organized pursuant to the provisions of this chapter is hereby empowered and given the right to:

(a) accept, receive, take, hold, own, and possess any gift, donation, grant, devise, or bequest or any property (real, personal, or mixed) or any improved or unimproved park or playground; and

(b) utilize, hold, or dispose of the same for planning purposes not inconsistent with the provisions of this chapter.

(2) Any money so accepted shall be deposited with the city or county in a special nonreverting planning board fund to be available for expenditures by the planning board for the purpose designated by the donor. The disbursing officer of a city or county shall draw warrants against such special nonreverting fund only upon vouchers signed by the president and secretary of the planning board.

History: En. Sec. 27, Ch. 246, L. 1957; amd. Sec. 1, Ch. 133, L. 1965; R.C.M. 1947, 11-3827(part).

76-1-409. Acceptance and administration of government funds and services. Upon approval of the governing bodies represented on the board, a planning board may accept, receive, and expend funds, grants, and services from the federal government or its agencies and instrumentalities, from state or local governments or their agencies and instrumentalities, or from civic sources; may contract with respect thereto; and may provide such information and reports as may be necessary to secure such financial aid.

History: En. Sec. 27, Ch. 246, L. 1957; amd. Sec. 1, Ch. 133, L. 1965; R.C.M. 1947, 11-3827(part); amd. Sec. 6, Ch. 266, L. 1979.

76-1-410. Planning fees — limit. (1) Governing bodies that have committed in a resolution to adopting or that have adopted a growth policy that includes the provisions of 76-1-601(4)(c) may assess planning fees to pay for services that fulfill the purposes of Title 76, chapter 1. The planning fees are in addition to any other fees authorized by law and may be collected as part of either subdivision applications or zoning permits.

(2) Planning fees may not exceed $50 for each residential lot or unit or $250 for each commercial, industrial, or other type of lot or unit.

History: En. Sec. 3, Ch. 455, L. 2007.

Part 5
Jurisdictional Area

76-1-501. Jurisdictional area of county planning board. The board of county commissioners shall by resolution establish the jurisdictional area of the county planning board. The jurisdictional area shall include the area which is both outside the incorporated limits of any city in the county as well as outside the jurisdictional area of an existing city-county planning board established pursuant to 76-1-504 through 76-1-507. Should any city or town become represented on the county planning board pursuant to 76-1-111, the jurisdictional area of the county planning board shall be extended to include that city or town.

History: En. 11-3830.2 by Sec. 8, Ch. 273, L. 1971; R.C.M. 1947, 11-3830.2(1).

76-1-502. Filing of map of jurisdictional area of county planning board — revision of boundaries. The planning board, after the approval of the jurisdictional area by the board of county commissioners, shall file in the office of the clerk and recorder a map showing the boundaries of the jurisdictional area. The boundaries may be revised from time to time by resolution of the board of county commissioners. Such revised boundaries shall be shown upon a map which shall be filed as provided in this section. The area included in such map shall constitute the area over which the planning board shall have advisory jurisdiction.

History: En. 11-3830.2 by Sec. 8, Ch. 273, L. 1971; R.C.M. 1947, 11-3830.2(2).

76-1-503. Resolution of conflicts involving jurisdictional area of county planning boards. (1) In case an unincorporated area is within the potential jurisdiction of more than one planning board, then the boundary between the conflicting areas shall be determined by agreement between the planning boards involved with the approval of their respective governing bodies. Any map showing the boundary line so agreed upon and approved shall be filed as provided in 76-1-502 and thereafter shall fix the limit of territorial jurisdiction with respect to planning boards.

(2) In case the jurisdictional area of a city-county planning board, which is established subsequent to the establishment of a county planning board, is potentially within the jurisdiction of the county planning board, then the property outside any incorporated city between the conflicting areas shall be determined by agreement between the planning boards involved with the approval of the respective governing bodies, and a map showing the boundary lines so agreed upon shall be filed as provided in 76-1-502 and thereafter shall fix the limits of the territorial jurisdiction of the respective planning boards.

History: En. 11-3830.2 by Sec. 8, Ch. 273, L. 1971; R.C.M. 1947, 11-3830.2(3), (4).

76-1-504. Jurisdictional area of city-county planning board. The governing bodies represented on a city-county planning board shall by separate resolution establish the jurisdictional area of the planning board. The jurisdictional area shall include the area within the incorporated limits of the city and such contiguous unincorporated area outside the city as, in the judgment of the respective governing bodies, bears reasonable relation to the development of the area involved.

History: En. Sec. 30, Ch. 246, L. 1957; amd. Sec. 3, Ch. 271, L. 1959; amd. Sec. 11, Ch. 247, L. 1963; amd. Sec. 1, Ch. 136, L. 1969; R.C.M. 1947, 11-3830(part).

76-1-505. Extension of boundaries of city-county planning board jurisdictional area. (1) The boundaries of the jurisdictional area can be extended further than 4½ miles from the limits of the cities only upon petition signed by 5% or more of the resident freeholders living in excess of 4½ miles and not more than 12 miles from the limits of the cities and within the area desiring to be included within said jurisdictional limits and upon presentation of said petition to the board of county commissioners.

(2) Thereafter, the board of county commissioners must by resolution set the proposed boundaries of said area and give notice of their intent to add said area to the jurisdictional limits theretofore created and of receipt of said petition by publication of notice of time and place of hearing on said petition and resolution. Said notice is to be published in a newspaper published in the county not less than 10 or more than 20 days prior to the date of said hearing. Thereafter, the boundaries of said area can only be set upon good cause being shown for the establishment of said extended jurisdictional area and the boundaries thereof, provided that such resolution shall

not be adopted by the board of county commissioners if disapproved in writing by a majority of the freeholders of the territory proposed to be embraced. The jurisdictional area shall not extend more than 12 miles beyond the limits of any city within the jurisdictional area.

History: En. Sec. 30, Ch. 246, L. 1957; amd. Sec. 3, Ch. 271, L. 1959; amd. Sec. 11, Ch. 247, L. 1963; amd. Sec. 1, Ch. 136, L. 1969; R.C.M. 1947, 11-3830(part).

Cross-References

Publication of legal notices, Title 18, ch. 7, part 2; 18-7-411.

76-1-506. Filing of map of jurisdictional area of city-county planning board — revision of boundaries. The planning board, after approval of the jurisdictional area by the governing bodies, shall file in the office of the clerk and recorder a map showing the boundaries of the jurisdictional area. The boundaries may be revised from time to time by resolutions of the governing bodies. Such revised boundaries shall be shown upon a map which shall be filed as provided in this section. The area included in such map shall constitute the area over which the planning board shall have advisory jurisdiction.

History: En. Sec. 30, Ch. 246, L. 1957; amd. Sec. 3, Ch. 271, L. 1959; amd. Sec. 11, Ch. 247, L. 1963; amd. Sec. 1, Ch. 136, L. 1969; R.C.M. 1947, 11-3830(2).

76-1-507. Resolution of conflicts over jurisdictional areas of several city-county planning boards. In case an unincorporated area is within the potential jurisdiction of more than one planning board, then the boundary between the conflicting areas shall be determined by agreement between the planning boards involved with the approval of their respective governing bodies. A map showing the boundary lines so agreed upon and approved shall be filed as provided in 76-1-506 and thereafter shall fix the limit of territorial jurisdiction of the respective planning boards.

History: En. Sec. 30, Ch. 246, L. 1957; amd. Sec. 3, Ch. 271, L. 1959; amd. Sec. 11, Ch. 247, L. 1963; amd. Sec. 1, Ch. 136, L. 1969; R.C.M. 1947, 11-3830(3).

76-1-508. Planning projects outside city-county planning board jurisdictional area — broad construction. (1) Any city-county planning board organized pursuant to the provisions of this chapter is hereby empowered, if requested by the board of county commissioners, to conduct specific planning projects within the county and outside of the jurisdictional area of said city-county planning board as defined in 76-1-504 through 76-1-507.

(2) Such authority to conduct specific planning projects outside of the jurisdictional area of the city-county planning board upon request of the board of county commissioners shall be broadly construed so as to enable the county to qualify under the provisions of and regulations governing any planning assistance program administered by any agency of the United States of America or the state of Montana.

History: En. Sec. 1, Ch. 190, L. 1965; R.C.M. 1947, 11-3830.1.

Part 6
Growth Policy

Part Cross-References

Compliance with growth policy required for annexation, 7-2-4734(3).
Publication of legal notices, Title 18, ch. 7, part 2; 18-7-411.
Compliance required by cemetery associations, 35-20-201.

76-1-601. Growth policy — contents. (1) A growth policy may cover all or part of the jurisdictional area.

(2) The extent to which a growth policy addresses the elements listed in subsection (3) is at the full discretion of the governing body.

(3) A growth policy must include:

(a) community goals and objectives;

(b) maps and text describing an inventory of the existing characteristics and features of the jurisdictional area, including:

(i) land uses;

(ii) population;

(iii) housing needs;

(iv) economic conditions;

(v) local services;

(vi) public facilities;
(vii) natural resources;
(viii) sand and gravel resources; and
(ix) other characteristics and features proposed by the planning board and adopted by the governing bodies;
(c) projected trends for the life of the growth policy for each of the following elements:
(i) land use;
(ii) population;
(iii) housing needs;
(iv) economic conditions;
(v) local services;
(vi) natural resources; and
(vii) other elements proposed by the planning board and adopted by the governing bodies;
(d) a description of policies, regulations, and other measures to be implemented in order to achieve the goals and objectives established pursuant to subsection (3)(a);
(e) a strategy for development, maintenance, and replacement of public infrastructure, including drinking water systems, wastewater treatment facilities, sewer systems, solid waste facilities, fire protection facilities, roads, and bridges;
(f) an implementation strategy that includes:
(i) a timetable for implementing the growth policy;
(ii) a list of conditions that will lead to a revision of the growth policy; and
(iii) a timetable for reviewing the growth policy at least once every 5 years and revising the policy if necessary;
(g) a statement of how the governing bodies will coordinate and cooperate with other jurisdictions that explains:
(i) if a governing body is a city or town, how the governing body will coordinate and cooperate with the county in which the city or town is located on matters related to the growth policy;
(ii) if a governing body is a county, how the governing body will coordinate and cooperate with cities and towns located within the county's boundaries on matters related to the growth policy;
(h) a statement explaining how the governing bodies will:
(i) define the criteria in 76-3-608(3)(a); and
(ii) evaluate and make decisions regarding proposed subdivisions with respect to the criteria in 76-3-608(3)(a);
(i) a statement explaining how public hearings regarding proposed subdivisions will be conducted; and
(j) an evaluation of the potential for fire and wildland fire in the jurisdictional area, including whether or not there is a need to:
(i) delineate the wildland-urban interface; and
(ii) adopt regulations requiring:
(A) defensible space around structures;
(B) adequate ingress and egress to and from structures and developments to facilitate fire suppression activities; and
(C) adequate water supply for fire protection.
(4) A growth policy may:
(a) include one or more neighborhood plans. A neighborhood plan must be consistent with the growth policy.
(b) establish minimum criteria defining the jurisdictional area for a neighborhood plan;
(c) establish an infrastructure plan that, at a minimum, includes:
(i) projections, in maps and text, of the jurisdiction's growth in population and number of residential, commercial, and industrial units over the next 20 years;
(ii) for a city, a determination regarding if and how much of the city's growth is likely to take place outside of the city's existing jurisdictional area over the next 20 years and a plan of how the city will coordinate infrastructure planning with the county or counties where growth is likely to take place;

(iii) for a county, a plan of how the county will coordinate infrastructure planning with each of the cities that project growth outside of city boundaries and into the county's jurisdictional area over the next 20 years;

(iv) for cities, a land use map showing where projected growth will be guided and at what densities within city boundaries;

(v) for cities and counties, a land use map that designates infrastructure planning areas adjacent to cities showing where projected growth will be guided and at what densities;

(vi) using maps and text, a description of existing and future public facilities necessary to efficiently serve projected development and densities within infrastructure planning areas, including, whenever feasible, extending interconnected municipal street networks, sidewalks, trail systems, public transit facilities, and other municipal public facilities throughout the infrastructure planning area. For the purposes of this subsection (4)(c)(vi), public facilities include but are not limited to drinking water treatment and distribution facilities, sewer systems, wastewater treatment facilities, solid waste disposal facilities, parks and open space, schools, public access areas, roads, highways, bridges, and facilities for fire protection, law enforcement, and emergency services;

(vii) a description of proposed land use management techniques and incentives that will be adopted to promote development within cities and in an infrastructure planning area, including land use management techniques and incentives that address issues of housing affordability;

(viii) a description of how and where projected development inside municipal boundaries for cities and inside designated joint infrastructure planning areas for cities and counties could adversely impact:

(A) threatened or endangered wildlife and critical wildlife habitat and corridors;

(B) water available to agricultural water users and facilities;

(C) the ability of public facilities, including schools, to safely and efficiently service current residents and future growth;

(D) a local government's ability to provide adequate local services, including but not limited to emergency, fire, and police protection;

(E) the safety of people and property due to threats to public health and safety, including but not limited to wildfire, flooding, erosion, water pollution, hazardous wildlife interactions, and traffic hazards;

(F) natural resources, including but not limited to forest lands, mineral resources, sand and gravel resources, streams, rivers, lakes, wetlands, and ground water; and

(G) agricultural lands and agricultural production; and

(ix) a description of measures, including land use management techniques and incentives, that will be adopted to avoid, significantly reduce, or mitigate the adverse impacts identified under subsection (4)(c)(viii).

(d) include any elements required by a federal land management agency in order for the governing body to establish coordination or cooperating agency status as provided in 76-1-607.

(5) The planning board may propose and the governing bodies may adopt additional elements of a growth policy in order to fulfill the purpose of this chapter.

History: Ap. p. Sec. 31, Ch. 246, L. 1957; amd. Sec. 12, Ch. 247, L. 1963; amd. Sec. 1, Ch. 156, L. 1973; Sec. 11-3831, R.C.M. 1947; Ap. p. Sec. 3, Ch. 246, L. 1957; amd. Sec. 2, Ch. 247, L. 1963; amd. Sec. 1, Ch. 349, L. 1973; Sec. 11-3803, R.C.M. 1947; R.C.M. 1947, 11-3803(part), 11-3831; amd. Sec. 8, Ch. 582, L. 1999; amd. Sec. 4, Ch. 599, L. 2003; amd. Sec. 1, Ch. 443, L. 2007; amd. Sec. 2, Ch. 455, L. 2007; amd. Sec. 2, Ch. 446, L. 2009; amd. Sec. 2, Ch. 65, L. 2013.

76-1-602. Public hearing on proposed growth policy. (1) Prior to the submission of the proposed growth policy to the governing bodies, the board shall give notice and hold a public hearing on the growth policy.

(2) The board shall publish a notice of the time and place of the hearing as provided in 7-1-2121 if the governing body is a county commission or as provided in 7-1-4127 for a time period in accordance with 7-1-4127(7)(b) if the governing body is a city commission or a town council.

History: En. Sec. 33, Ch. 246, L. 1957; amd. Sec. 13, Ch. 247, L. 1963; R.C.M. 1947, 11-3833; amd. Sec. 9, Ch. 582, L. 1999; amd. Sec. 8, Ch. 272, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 8, Ch. 272, L. 2025. Amendment effective October 1, 2025.

76-1-603. Adoption of growth policy by planning board. After consideration of the recommendations and suggestions elicited at the public hearing, the planning board shall by resolution:

(1) recommend the proposed growth policy and any proposed ordinances and resolutions for its implementation to the governing bodies of the governmental units represented on the planning board;

(2) recommend that a growth policy not be adopted; or

(3) recommend that the governing body take some other action related to preparation of a growth policy.

History: En. Sec. 34, Ch. 246, L. 1957; amd. Sec. 14, Ch. 247, L. 1963; R.C.M. 1947, 11-3834; amd. Sec. 10, Ch. 582, L. 1999; amd. Sec. 5, Ch. 599, L. 2003.

76-1-604. Adoption, revision, or rejection of growth policy. (1) The governing body shall adopt a resolution of intention to adopt, adopt with revisions, or reject the proposed growth policy.

(2) If the governing body adopts a resolution of intention to adopt a growth policy, the governing body may submit to the qualified electors of the area covered by the growth policy proposed by the governing body at the next primary or general election or at a special election the referendum question of whether or not the growth policy should be adopted. A special election must be held in conjunction with a regular or primary election.

(3) A governing body may:

(a) revise an adopted growth policy following the procedures in this chapter for adoption of a proposed growth policy; or

(b) repeal a growth policy by resolution.

(4) The qualified electors of the area covered by the growth policy may by initiative or referendum adopt, revise, or repeal a growth policy under this section. A petition for initiative or referendum must contain the signatures of 15% of the qualified electors of the area covered by the growth policy.

(5) A master plan adopted pursuant to this chapter before October 1, 1999, may be repealed following the procedures in this section for repeal of a growth policy.

(6) Until October 1, 2006, a master plan that was adopted pursuant to this chapter before October 1, 1999, may be revised following the procedures in this chapter for revision of a growth policy.

(7) Except as otherwise provided in this section, the provisions of Title 7, chapter 5, part 1, apply to an initiative or referendum under this section.

History: En. Sec. 40, Ch. 246, L. 1957; amd. Sec. 15, Ch. 247, L. 1963; R.C.M. 1947, 11-3840(part); amd. Sec. 1, Ch. 541, L. 1981; amd. Sec. 68, Ch. 387, L. 1995; amd. Sec. 11, Ch. 582, L. 1999; amd. Sec. 1, Ch. 87, L. 2003; amd. Sec. 6, Ch. 599, L. 2003.

76-1-605. Use of adopted growth policy. (1) Subject to subsection (2), after adoption of a growth policy, the governing body within the area covered by the growth policy pursuant to 76-1-601 must be guided by and give consideration to the general policy and pattern of development set out in the growth policy in the:

(a) authorization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities;

(b) authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities; and

(c) adoption of zoning ordinances or resolutions.

(2) (a) A growth policy is not a regulatory document and does not confer any authority to regulate that is not otherwise specifically authorized by law or regulations adopted pursuant to the law.

(b) A governing body may not withhold, deny, or impose conditions on any land use approval or other authority to act based solely on compliance with a growth policy adopted pursuant to this chapter.

History: En. Sec. 40, Ch. 246, L. 1957; amd. Sec. 15, Ch. 247, L. 1963; R.C.M. 1947, 11-3840(part); amd. Sec. 12, Ch. 582, L. 1999; amd. Sec. 1, Ch. 527, L. 2001; amd. Sec. 7, Ch. 599, L. 2003.

76-1-606. Effect of growth policy on subdivision regulations. When a growth policy has been approved, the subdivision regulations adopted pursuant to chapter 3 of this title must be made in accordance with the growth policy.

History: En. Sec. 42, Ch. 246, L. 1957; amd. Sec. 4, Ch. 271, L. 1959; amd. Sec. 16, Ch. 247, L. 1963; amd. Sec. 9, Ch. 273, L. 1971; R.C.M. 1947, 11-3842; amd. Sec. 13, Ch. 582, L. 1999; amd. Sec. 2, Ch. 527, L. 2001.

76-1-607. Growth policy — use and amendment for coordination and cooperation with federal agencies. (1) A local governing body may use a growth policy as a resource management plan for the purposes of establishing coordination or cooperating agency status with a federal land management agency.

(2) The governing body may amend the growth policy to include any elements required by a federal land management agency to establish coordination or cooperating agency status.

History: En. Sec. 1, Ch. 65, L. 2013.

CHAPTER 2
PLANNING AND ZONING

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76-2-311. Administration of regulations in extended area.
76-2-312. Exclusion for commission-manager plan municipalities.
76-2-313. Renumbered 76-2-411.
76-2-314. Renumbered 76-2-412.
76-2-315. Violations and penalties.
76-2-316. Continuation of nonconforming uses.
76-2-317 through 76-2-320 reserved.
76-2-321. Board of adjustment.
76-2-322. Membership and term of board members — vacancies.
76-2-323. Powers of board of adjustment.
76-2-324. Vote needed for board action.
76-2-325. Public access to board activities.
76-2-326. Appeals to board of adjustment.
76-2-327. Appeals from board to court of record.
76-2-328. Awarding of costs upon appeal from board decision.
76-2-329 through 76-2-339 reserved.
76-2-340. Effect on amateur radio antenna.
76-2-341 through 76-2-344 reserved.
76-2-345. Accessory dwelling units — regulations — restrictions.

Part 4 — Application to Governmental Agencies Group and Foster Homes

76-2-401. Definitions.
76-2-402. Local zoning regulations — application to agencies.
76-2-403 through 76-2-410 reserved.
76-2-411. Definition of community residential facility.
76-2-412. Relationship of foster homes, kinship foster homes, youth shelter care facilities, youth group homes, community residential facilities, and day-care homes to zoning.

Parts 5 through 8 reserved

Part 9 — Agricultural Activities

76-2-901. Agricultural activities — legislative finding and purpose.
76-2-902. Definitions.
76-2-903. Local ordinances.

Part 10 — Digital Asset Mining

76-2-1001 and 76-2-1002 reserved.
76-2-1003. Right to mine digital assets.

Chapter Cross-References

Duty to notify weed management district when proposed project will disturb land, 7-22-2152.

Part 1
County Planning and Zoning Commission

76-2-101. Planning and zoning commission and district. (1) Subject to the provisions of subsection (5), whenever the public interest or convenience may require and on petition of 60% of the affected real property owners in the proposed district, the board of county commissioners may create a planning and zoning district and may appoint a planning and zoning commission consisting of up to seven members.

(2) A planning and zoning district may not be created in an area that has been zoned by an incorporated city pursuant to 76-2-310 and 76-2-311.

(3) For the purposes of this part, the word "district" means any area that consists of not less than 40 acres.

(4) An action challenging the process to create a planning and zoning district must begin within 6 months after the date of the order by the board of county commissioners creating the district.

(5) (a) Before the board of county commissioners determines whether the number of affected real property owners necessary to meet the petition requirement of subsection (1) has been met, draft documents of the proposed materials that may potentially govern the proposed district must be made available to the board of county commissioners. Draft documents of the proposed materials required in this subsection (5) may include but are not limited to drafts of:

(i) a development pattern as provided in 76-2-104;

(ii) a resolution as provided in 76-2-107; and

(iii) the land use and zoning regulations as provided in 76-2-107.

(b) The final adopted development pattern, resolutions, and other materials that govern the zoning district as required in 76-2-104 and 76-2-107 must be similar to the draft documents provided to the county commissioners as required in subsection (5)(a).

History: (1), (2)En. Sec. 1, Ch. 154, L. 1953; amd. Sec. 16, Ch. 273, L. 1971; Sec. 16-4101, R.C.M. 1947; (3) En. Sec. 7, Ch. 154, L. 1953; amd. Sec. 1, Ch. 229, L. 1955; Sec. 16-4107, R.C.M. 1947; R.C.M. 1947, 16-4101(part), 16-4107; (4)En. Sec. 1, Ch. 441, L. 1989; amd. Sec. 1, Ch. 591, L. 1995; amd. Sec. 1, Ch. 288, L. 2001; amd. Sec. 3, Ch. 446, L. 2009; amd. Sec. 1, Ch. 533, L. 2021; amd. Sec. 1, Ch. 401, L. 2023.

76-2-102. Organization and operation of commission. (1) The planning and zoning commission consists of three county commissioners, either the county surveyor or the county clerk and recorder, two citizen members, each of whom resides in a different planning and zoning district or, if only one district exists in a county or is proposed, both from that district, and a county official appointed by the county commissioners. The citizen members must be appointed by the board of county commissioners to 2-year staggered terms, with one member initially appointed to a 2-year term and the remaining member initially appointed to a 1-year term. Members of the commission shall serve without compensation other than reimbursement for authorized expenses and must be residents of the county in which they serve.

(2) The commission may appoint necessary employees and fix their compensation with the approval of the board of county commissioners, select a presiding officer to serve for 1 year, appoint a secretary to keep permanent and complete records of its proceedings, and adopt rules governing the transaction of its business.

(3) Subject to 15-10-420, the finances necessary for the transaction of the planning and zoning commission's business and to pay the expenses of the employees and justified expenses of the commission's members must be paid from a levy on the taxable value of all taxable property within the district.

History: En. Sec. 1, Ch. 154, L. 1953; amd. Sec. 16, Ch. 273, L. 1971; R.C.M. 1947, 16-4101(part); amd. Sec. 137, Ch. 27, Sp. L. November 1993; amd. Sec. 143, Ch. 584, L. 1999; amd. Sec. 2, Ch. 288, L. 2001; amd. Sec. 193, Ch. 574, L. 2001; amd. Sec. 4, Ch. 446, L. 2009.

76-2-103. Powers of commission and employees. (1) In general, the planning and zoning commission shall have such powers as may be appropriate to enable it to fulfill its functions and duties to promote county planning and to carry out the purposes of this part.

(2) The planning and zoning commission and any of its members, officers, and employees in the performance of their functions may enter upon any land and make examinations and surveys and place and maintain the necessary monuments and markers thereon.

History: En. Sec. 4, Ch. 154, L. 1953; R.C.M. 1947, 16-4104(part).

76-2-104. Development pattern. (1) For the purpose of furthering the health, safety, and general welfare of the people of the county, the county planning and zoning commission hereby is empowered and it shall be its duty to make and adopt a development pattern for the physical and economic development of the planning and zoning district.

(2) Such development pattern, with the accompanying maps, plats, charts, and descriptive matter, shall show the planning and zoning commission's recommendations for the development of the districts, within some of which it shall be lawful and within others of which it shall be unlawful to erect, construct, alter, or maintain certain buildings or to carry on certain trades, industries, or callings or within which the height and bulk of future buildings and the area of the yards, courts, and other open spaces and the future uses of the land or buildings shall be limited and future building setback lines shall be established.

History: En. Sec. 2, Ch. 154, L. 1953; R.C.M. 1947, 16-4102(part).

76-2-105. Continuation of nonconforming uses. (1) The zoning regulations must allow for the nonconforming use of land or buildings legal at the time or prior to the time that a zoning regulation or amendment to the regulation was adopted, but the board of county commissioners may provide grounds for discontinuing nonconforming uses based on changes to or abandonment of the use of the land or buildings after the adoption of a zoning regulation or amendment.

(2) Any ambiguity or uncertainty in the zoning regulations as to whether a nonconforming use is allowed or whether the use was allowed when it was commenced must be interpreted in favor of the nonconforming use.

History: En. Sec. 2, Ch. 154, L. 1953; R.C.M. 1947, 16-4102(part); amd. Sec. 1, Ch. 369, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 369, L. 2025. Amendment effective May 5, 2025.

76-2-106. Adoption of development district. (1) Adoption by the planning and zoning commission of the development district or any change therein may be in whole or in part but must be by the affirmative vote of the majority of the whole commission, provided, however, that prior to any such adoption, a public hearing shall have been held not less than 15 days after notice thereof shall have been posted in at least three public places within the area affected.

(2) The resolution adopting the district or any part or parts covering one or more of the functional elements which may be included within the district shall refer expressly to the maps, charts, and descriptive matters forming the pattern or part thereof. The board of county commissioners shall have the power to authorize such variance from the recommendations of the planning commission as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the decision of the planning and zoning commission will result in unnecessary hardship.

History: En. Sec. 3, Ch. 154, L. 1953; R.C.M. 1947, 16-4103.

76-2-107. Preparation of resolutions and other materials. (1) The planning and zoning commission may, for the benefit and welfare of the county, prepare and submit to the board of county commissioners drafts of resolutions for the purpose of carrying out the development districts or any part of the development districts previously adopted by the commission, including zoning and land use regulations, the making of official maps, and the preservation of the integrity of the development districts and the official maps and including procedure for appeals from decisions made under the authority of the regulations and regulations for the conservation of the natural resources of the county. The board of county commissioners is authorized to adopt these resolutions.

(2) Notwithstanding the provisions of 76-2-104 and subsection (1) of this section, if the planning and zoning commission is unable to make and adopt a development pattern or to adopt a development district, the board of county commissioners may adopt a resolution to void a planning and zoning district created pursuant to 76-2-101.

History: En. Sec. 5, Ch. 154, L. 1953; R.C.M. 1947, 16-4105(part); amd. Sec. 5, Ch. 446, L. 2009.

76-2-108. Permits authorized. The planning and zoning commission hereby is empowered to authorize and provide for the issuance of permits as a prerequisite to construction, alteration, or enlargement of any building or structure otherwise subject to the provisions of this part and may establish and collect reasonable fees therefor. The fees so collected are to go to the general fund of the county.

History: En. Sec. 5, Ch. 154, L. 1953; R.C.M. 1947, 16-4105(part).

76-2-109. Effect on natural resources. (1) Regulations adopted under this part may not regulate lands used for grazing, horticulture, agriculture, the growing of timber, or the complete use, development, or recovery of any mineral.

(2) (a) A provision of this part may not be construed to alter Montana law regarding the primacy of the mineral estate, to limit access to the mineral estate, or to limit development of the mineral estate.

(b) A regulation, resolution, or rule adopted pursuant to the provisions of this part may not prevent the complete use, development, or recovery of any mineral that is under the jurisdiction of the board of oil and gas conservation pursuant to Title 82, chapter 11, part 1.

History: En. Sec. 2, Ch. 154, L. 1953; R.C.M. 1947, 16-4102(part); amd. Sec. 1, Ch. 526, L. 2021; amd. Sec. 2, Ch. 533, L. 2021.

76-2-110. Appeal procedure. Any person aggrieved by any decision of the commission or the board of county commissioners may, within 30 days after such decision or order, appeal to the district court in the county in which the property involved is located.

History: En. Sec. 5, Ch. 154, L. 1953; R.C.M. 1947, 16-4105(part).

76-2-111. Cooperation by public agencies with commission. All public officials, departments, and agencies having information, maps, and data deemed by the commission pertinent to county planning are hereby empowered and directed to make such information available for the use of the county planning and zoning commission.

History: En. Sec. 4, Ch. 154, L. 1953; R.C.M. 1947, 16-4104(part).

76-2-112. Effect on powers of incorporated communities to plan adjacent areas. The authority heretofore granted by law to the incorporated communities to approve subdivision plats within the unincorporated area adjacent to their corporate limits is not abrogated by this part except and until the board of county commissioners having jurisdiction over such adjacent area establishes a planning commission and adopts initial regulations for subdivision control within adjacent areas or districts. Authority of the adjacent municipality shall be suspended on the effective date of the county regulation with respect to all areas governed by county subdivision regulations.

History: En. Sec. 6, Ch. 154, L. 1953; R.C.M. 1947, 16-4106.

76-2-113. Enforcement and interpretation of zoning provisions. (1) If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or if any building, structure, or land is used in violation of this part or of any resolution adopted under this part, the county, in addition to other remedies, may take any appropriate action or begin proceedings to:

(a) prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;

(b) restrain, correct, or abate a violation;

(c) prevent the occupancy of a building, structure, or land; or

(d) prevent any illegal act, conduct, business, or use in or near the premises.

(2) In interpreting a use and in determining whether a use violates this part or a resolution adopted under this part, any ambiguity or uncertainty in the zoning regulations as to whether the use is in violation must be interpreted in favor of the use in question.

History: En. Sec. 3, Ch. 288, L. 2001; amd. Sec. 2, Ch. 369, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 369, L. 2025. Amendment effective May 5, 2025.

76-2-114. Housing fees and dedication of real property prohibited. (1) A local governing body may not adopt a resolution under this part that includes a requirement to:

(a) pay a fee for the purpose of providing housing for specified income levels or at specified sale prices; or

(b) dedicate real property for the purpose of providing housing for specified income levels or at specified sale prices.

(2) A dedication of real property as prohibited in subsection (1)(b) includes a payment or other contribution to a local housing authority or the reservation of real property for future development of housing for specified income levels or specified sale prices.

History: En. Sec. 1, Ch. 249, L. 2021.

Cross-References

Imposition of fee or dedication on owner of addition prohibited, 7-2-4203.

Imposition of fee or dedication in zoning regulations prohibited, 76-2-203.

Imposition of fee or dedication in zoning regulations prohibited, 76-2-302.

Imposition of fee or dedication by local governing body as condition of approval of subdivision prohibited, 76-3-514.

76-2-115 and 76-2-116 reserved.

76-2-117. Addition of territory adjacent to existing planning and zoning district. Territory that is directly adjacent to an existing planning and zoning district but that is not part of the district may be added to the district subject to the procedures provided in this part.

History: En. Sec. 1, Ch. 439, L. 2003.

76-2-118. Termination of zoning district. (1) (a) Real property owners in a zoning district may petition the board of county commissioners to submit a referendum to the registered electors residing in the zoning district to terminate the zoning district. The petition must be in writing and contain the signatures and addresses of 20% or more of the real property owners in the zoning district. The petition requesting a referendum for the termination of a zoning district must be delivered to the county clerk and recorder, who shall endorse on it the date when the petition was received and validate the signatures within 60 days of receipt of the petition. If the petition contains valid signatures of at least 20% of the real property owners within the zoning district, the county clerk and recorder shall notify the county commissioners.

(b) On receipt of a valid petition described in subsection (1)(a), the county commissioners shall submit the referendum to the registered electors residing in the district in an election conducted pursuant to Title 13, chapter 1, part 4 or 5.

(c) If the referendum described in subsection (1)(a) and conducted under subsection (1)(b) is not successful, the real property owners in the zoning district may not bring forth a subsequent referendum petition for 3 years from the date that the original referendum was submitted to the registered electors pursuant to subsection (1)(b).

(2) The board of county commissioners may, after providing notice as required in 76-2-106(1) and holding a public hearing, pass a resolution to terminate a zoning district if the county:

(a) has decided to comply with the provisions of the Montana Land Use Planning Act under Title 76, chapter 25, using the process specified in 76-25-105; or

(b) has established a larger zoning district pursuant to Title 76, chapter 2, part 2, that encompasses the land within the zoning district to be terminated.

History: En. Sec. 2, Ch. 401, L. 2023; amd. Sec. 1, Ch. 325, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 325, L. 2025. Amendment effective October 1, 2025.

76-2-119. Regulation of construction types. (1) Regulations adopted under this part may not treat manufactured housing or factory-built housing units different from any other residential units.

(2) In a proceeding for a permit or variance to place manufactured housing or factory-built housing within a residential zoning district, there is a rebuttable presumption that placement of a manufactured home or factory-built home will not adversely affect property values of conventional housing.

(3) As used in this part, "factory-built housing" means a factory-assembled structure intended for residential use that:

(a) is equipped with the necessary service connections but not made to be readily movable as a unit or units;

(b) is designed to be used with a permanent foundation; and

(c) is not certified by the United States department of housing and urban development but meets the inspection requirement of Title 50, chapter 60, part 4.

History: En. Sec. 1, Ch. 376, L. 2025.

Compiler's Comments

Effective Date: This section is effective October 1, 2025.

Part 2
County Zoning

76-2-201. County zoning authorized. (1) For the purpose of promoting the public health, safety, morals, and general welfare, a board of county commissioners that has adopted a growth policy pursuant to chapter 1 is authorized to adopt zoning regulations for all or parts of the jurisdictional area in accordance with the provisions of this part.

(2) For the purpose of promoting the public health, safety, morals, and general welfare, a board of county commissioners that adopted a master plan pursuant to Title 76, chapter 1, before October 1, 1999, may, until October 1, 2006, adopt or revise zoning regulations that are consistent with the master plan.

History: En. Sec. 1, Ch. 246, L. 1963; R.C.M. 1947, 16-4701; amd. Sec. 14, Ch. 582, L. 1999; amd. Sec. 2, Ch. 87, L. 2003; amd. Sec. 8, Ch. 599, L. 2003.

76-2-202. Establishment of zoning districts — regulations. (1) (a) Within the unincorporated portions of a jurisdictional area that has been established under provisions of 76-1-501 through 76-1-503 or 76-1-504 through 76-1-507 and for the purposes provided in 76-2-201, the board of county commissioners may by resolution establish zoning regulations for a part or all of the jurisdictional area or divide the county into zoning districts with zoning regulations that are considered best suited to carry out the purposes of this part. By establishing zoning regulations, the board may regulate the erection, construction, reconstruction, alteration, repair, location, or use of buildings or structures or the use of land, including the creation of zoning districts that allow tiny dwelling units.

(b) An action challenging the creation of a zoning district or adoption of zoning regulations must be commenced within 6 months after the date of the order by the board of county commissioners creating the district or adopting the regulations.

(2) (a) Zoning regulations adopted under this part may not treat manufactured housing or factory-built housing units differently from any other residential units.

(b) In a proceeding for a permit or variance to place manufactured housing or factory-built housing within a residential zoning district, there is a rebuttable presumption that placement of a manufactured home or factory-built home will not adversely affect property values of conventional housing.

(3) The regulations in one district may differ from those in other districts.

(4) As used in this section, the following definitions apply:

(a) "Factory-built housing" means a factory-assembled structure intended for residential use that:

(i) is equipped with the necessary service connections but not made to be readily movable as a unit or units;

(ii) is designed to be used with a permanent foundation; and

(iii) is not certified by the United States department of housing and urban development but meets the inspection requirements of Title 50, chapter 60, part 4.

(b) "Manufactured housing" means a dwelling for a single household, built offsite in a factory, that is in compliance with the applicable prevailing standards of the United States department of housing and urban development at the time of its production. A manufactured home does not include a mobile home or housetrailer, as defined in 15-1-101.

(c) (i) "Tiny dwelling unit" means a residential dwelling unit that is 350 to 750 square feet, is on a permanent foundation, and is used as a single-family dwelling for at least 45 days or longer.

(ii) Appendix Q, tiny houses, of the International Building Code as it was printed on January 1, 2023, may govern all other requirements of a tiny dwelling unit that is 350 to 750 square feet.

(5) This section may not be construed to limit conditions imposed in historic districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant to Title 70, chapter 17, part 2.

History: **En. Sec. 3, Ch. 246, L. 1963; amd. Sec. 18, Ch. 273, L. 1971; R.C.M. 1947, 16-4703; (1)(b)En. Sec. 2, Ch. 441, L. 1989; amd. Sec. 1, Ch. 505, L. 1993; amd. Sec. 274, Ch. 42, L. 1997; amd. Sec. 236, Ch. 542, L. 2005; amd. Sec. 123, Ch. 596, L. 2005; amd. Sec. 6, Ch. 446, L. 2009; amd. Sec. 1, Ch. 178, L. 2023; amd. Sec. 2, Ch. 376, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 376, L. 2025. Amendment effective October 1, 2025.

76-2-203. Criteria and guidelines for zoning regulations. (1) Zoning regulations must be:

(a) made in accordance with the growth policy; and

(b) designed to:

(i) secure safety from fire and other dangers;

(ii) promote public health, public safety, and general welfare; and

(iii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

(2) In the adoption of zoning regulations, the board of county commissioners shall consider:

(a) reasonable provision of adequate light and air;

(b) the effect on motorized and nonmotorized transportation systems;

(c) compatible urban growth in the vicinity of cities and towns that at a minimum must include the areas around municipalities;

(d) the character of the district and its peculiar suitability for particular uses; and

(e) conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

(3) Zoning regulations must, as nearly as possible, be made compatible with the zoning ordinances of nearby municipalities.

(4) Zoning regulations may not include a requirement to:

(a) pay a fee for the purpose of providing housing for specified income levels or at specified sale prices; or

(b) dedicate real property for the purpose of providing housing for specified income levels or at specified sale prices.

(5) A dedication of real property as prohibited in subsection (4)(b) includes a payment or other contribution to a local housing authority or the reservation of real property for future development of housing for specified income levels or specified sale prices.

History: En. Sec. 4, Ch. 246, L. 1963; R.C.M. 1947, 16-4704; amd. Sec. 15, Ch. 582, L. 1999; amd. Sec. 3, Ch. 87, L. 2003; amd. Sec. 7, Ch. 446, L. 2009; amd. Sec. 4, Ch. 249, L. 2021.

Cross-References

Imposition of fee or dedication on owner of addition prohibited, 7-2-4203.

Imposition of fee or dedication by local governing body resolution prohibited, 76-2-114.

Imposition of fee or dedication in zoning regulations prohibited, 76-2-302.

Imposition of fee or dedication by local governing body as condition of approval of subdivision prohibited, 76-3-514.

76-2-204. Role of planning boards. (1) The board of county commissioners shall require the county planning board and the city-county planning board to recommend boundaries and appropriate regulations for the various zoning districts. The county planning board and the city-county planning board shall make written reports of their recommendations to the board of county commissioners, but such recommendations shall be advisory only.

(2) This section shall apply to either the county planning board or the city-county planning board where only one of these planning boards has been established.

History: En. Sec. 2, Ch. 246, L. 1963; amd. Sec. 17, Ch. 273, L. 1971; R.C.M. 1947, 16-4702.

76-2-205. Procedure for adoption and amendment of regulations and boundaries. (1) The board of county commissioners shall observe the procedures described in subsections (2) through (8) when establishing or revising boundaries for zoning districts and when adopting or amending zoning regulations.

(2) (a) Notice of a public hearing on the proposed zoning district boundaries and of regulations for the zoning district must state:

(i) the boundaries of the proposed district;

(ii) the general character of the proposed zoning regulations;

(iii) the time and place of the public hearing; and

(iv) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder.

(b) The notice must be:

(i) posted not less than 45 days before the public hearing in at least five public places, including but not limited to public buildings and adjacent to public rights-of-way, within the proposed district; and

(ii) published once a week for 2 weeks in a newspaper of general circulation within the county.

(3) At the public hearing, the board of county commissioners shall give the public an opportunity to be heard regarding the proposed zoning district and regulations.

(4) After the public hearing, the board of county commissioners shall review the proposals of the planning board and shall make any revisions or amendments that it determines to be proper.

(5) The board of county commissioners may pass a resolution of intention to create a zoning district and to adopt zoning regulations for the district.

(6) The board of county commissioners shall publish notice of passage of the resolution of intention once a week for 2 weeks in a newspaper of general circulation within the county. The notice must state:

(a) the boundaries of the proposed district;

(b) the general character of the proposed zoning regulations;

(c) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder; and

(d) that for 30 days after first publication of this notice, the board of county commissioners will receive written comments on the creation of the zoning district or to the zoning regulations from persons owning real property within the district whose names appear on the last-completed assessment roll of the county.

(7) Within 30 days after the expiration of the comment period, the board of county commissioners may in its discretion adopt the resolution creating the zoning district or establishing the zoning regulations for the district.

(8) (a) When amending a zoning regulation, the board of county commissioners shall provide notice of a public hearing on the proposed amendment to the zoning regulation.

(b) The notice must state:

(i) a general description of the changes to the regulation;

(ii) the time and place of the public hearing; and

(iii) that the original zoning regulation and any proposed amendments to the original zoning regulation are on file for public inspection at the office of the county clerk and recorder.

(c) The notice must be:

(i) posted not less than 15 days before the public hearing; and

(ii) published once a week for 2 weeks in a newspaper of general circulation within the county.

(d) The board of county commissioners may adopt a resolution amending the zoning regulation after the public hearing.

History: En. Sec. 5, Ch. 246, L. 1963; amd. Sec. 19, Ch. 273, L. 1971; R.C.M. 1947, 16-4705; amd. Sec. 2, Ch. 591, L. 1995; amd. Sec. 8, Ch. 446, L. 2009; amd. Sec. 2, Ch. 380, L. 2021; amd. Sec. 1, Ch. 154, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 154, L. 2025. Amendment effective October 1, 2025.

76-2-206. Interim zoning district or regulation. (1) Except as provided in 76-2-240 and subject to subsection (3) of this section, the board of county commissioners may establish an interim zoning district or interim regulation to address an emergency that involves the public health, safety, morals, or general welfare if:

(a) the purpose of the interim zoning district or interim regulation is to classify those uses and related matters that must be regulated to mitigate the emergency; and

(b) within 30 working days, the county initiates a study or investigation to verify that an emergency exists and to identify the facts and circumstances that constitute the emergency, the potential options for mitigating the emergency, and the course of action that the governing body intends to take, if any, during the term of the interim zoning district or interim regulation to mitigate the emergency.

(2) A resolution for an interim zoning district or interim regulation must be limited to 1 year from the date it becomes effective. Subject to subsections (4) and (5), the board of county commissioners may extend the resolution for 1 year, but not more than one extension may be made.

(3) The board of county commissioners shall observe the following procedures in the establishment of an interim zoning district or interim regulation:

(a) Notice of a public hearing on the proposed interim zoning district boundaries or of the interim regulation must be published as provided in 7-1-2121. In addition to the requirements of 7-1-2121, the notice must state:

(i) the boundaries of the proposed district;

(ii) the specific emergency compelling the establishment of the proposed interim zoning district or interim regulation;

(iii) the general character of the proposed interim zoning district or interim regulation, including how those uses and related matters that must be regulated to mitigate the emergency will be classified and regulated; and

(iv) that the proposed interim zoning district or interim regulation is on file for public inspection at the office of the county clerk and recorder.

(b) At the public hearing, the board of county commissioners shall give the public an opportunity to be heard regarding the proposed establishment of an interim zoning district or interim regulation.

(c) After the hearing, the board of county commissioners may adopt a resolution to establish an interim zoning district or interim regulation.

(4) The board of county commissioners shall observe the following procedures in the extension of a resolution pursuant to subsection (2):

(a) A study or investigation as provided in subsection (1)(b) must be completed prior to the hearing on the proposed extension of the resolution.

(b) Notice of a public hearing on the proposed extension of the resolution must be published as provided in 7-1-2121. In addition to the requirements of 7-1-2121, the notice must state:

(i) the boundaries of the existing interim zoning district;

(ii) the specific emergency that compelled the establishment of the existing interim zoning district or interim regulation and the reason for the proposed extension of the resolution; and

(iii) that the proposed extension of the resolution is on file for public inspection at the office of the county clerk and recorder.

(c) At the public hearing, which must be held prior to the expiration of the existing interim zoning district or interim zoning regulation, the board of county commissioners shall give the public an opportunity to be heard regarding the proposed extension of the resolution.

(5) After the hearing provided for in subsection (4), the board of county commissioners may in its discretion extend the resolution for the interim zoning district or interim regulation.

History: En. 16-4711 by Sec. 20, Ch. 273, L. 1971; R.C.M. 1947, 16-4711; amd. Sec. 16, Ch. 582, L. 1999; amd. Sec. 4, Ch. 87, L. 2003; amd. Sec. 9, Ch. 446, L. 2009; amd. Sec. 5, Ch. 56, L. 2013; amd. Sec. 1, Ch. 416, L. 2013.

76-2-207. Permits authorized. The board of county commissioners may provide for the issuance of location or conformance permits and may collect a fee for each such permit. The proceeds of such fees shall be deposited in the general fund of the county.

History: En. Sec. 8, Ch. 246, L. 1963; R.C.M. 1947, 16-4708(part).

76-2-208. Continuation of nonconforming uses. (1) The zoning regulations must allow for the nonconforming use of land or buildings legal at the time or prior to the time that a zoning regulation or amendment to the regulation was adopted, but the board of county commissioners may provide grounds for discontinuing nonconforming uses based on changes to or abandonment of the use of the land or buildings after the adoption of a zoning regulation or amendment.

(2) Any ambiguity or uncertainty in the zoning regulations as to whether a nonconforming use is allowed or whether the use was allowed when it was commenced must be interpreted in favor of the nonconforming use.

History: En. Sec. 9, Ch. 246, L. 1963; R.C.M. 1947, 16-4709; amd. Sec. 3, Ch. 369, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 369, L. 2025. Amendment effective May 5, 2025.

76-2-209. Effect on natural resources. (1) Except as provided in 82-4-431, 82-4-432, and subsection (2) of this section, a resolution or rule adopted pursuant to the provisions of this part, except 76-2-206, may not prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner of any mineral, forest, or agricultural resource.

(2) The complete use, development, or recovery of a mineral by an operation that mines sand and gravel or an operation that mixes concrete or batches asphalt may be reasonably conditioned or prohibited on a site that is located within a geographic area zoned as residential, as defined by the board of county commissioners and in effect prior to the filing of a permit application or at the time a written request is received for a preapplication meeting pursuant to 82-4-432.

(3) Zoning regulations adopted under this chapter and in effect prior to the filing of a permit application or at the time a written request is received for a preapplication meeting pursuant to 82-4-432 may reasonably condition, but not prohibit, the complete use, development, or recovery of a mineral by an operation that mines sand and gravel and may condition an operation that mixes concrete or batches asphalt in all zones other than residential.

History: En. Sec. 10, Ch. 246, L. 1963; R.C.M. 1947, 16-4710; amd. Sec. 2, Ch. 408, L. 1991; amd. Sec. 1, Ch. 340, L. 2005; amd. Sec. 1, Ch. 545, L. 2021.

76-2-210. Enforcement and interpretation of zoning provisions. (1) If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used in violation of this part or of any resolution adopted under this part, the county, in addition to other remedies, may institute any appropriate action or proceedings to:

(a) prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;

(b) restrain, correct, or abate a violation;

(c) prevent the occupancy of the building, structure, or land; or

(d) prevent any illegal act, conduct, business, or use in or near the premises.

(2) In interpreting a use and in determining whether a use violates this part or a resolution adopted under this part, any ambiguity or uncertainty in the zoning regulations as to whether the use is in violation must be interpreted in favor of the use in question.

(3) For the purposes of enforcing subsections (1)(a) through (1)(c), the county shall attempt to obtain voluntary compliance at least 30 days before filing a complaint for a violation of this part that is subject to the penalties under 76-2-211.

(4) The board of county commissioners may appoint enforcing officers to supervise and enforce the provisions of the zoning resolutions.

History: En. Secs. 7, 8, Ch. 246, L. 1963; R.C.M. 1947, 16-4707(part), 16-4708(part); amd. Sec. 10, Ch. 446, L. 2009; amd. Sec. 4, Ch. 369, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 369, L. 2025. Amendment effective May 5, 2025.

76-2-211. Violations and penalties. A violation of this part or any resolution adopted pursuant thereto is a misdemeanor and shall be punishable by a fine not exceeding $500 or imprisonment in the county jail not exceeding 6 months or both.

History: En. Sec. 7, Ch. 246, L. 1963; R.C.M. 1947, 16-4707(part); amd. Sec. 7, Ch. 266, L. 1979.

76-2-212. Minimum lot size restrictions. A board of county commissioners may not adopt zoning regulations under this part that require minimum lot sizes in an area zoned for residential use unless:

(1) the zoning regulation requiring minimum lot sizes is applied to land that is within 3 miles of the limits of an incorporated municipality; or

(2) the county has adopted a land use map in its growth policy pursuant to 76-1-601(5) that sets forth projected population densities and recommended minimum lot sizes.

History: En. Sec. 3, Ch. 380, L. 2021.

76-2-213 and 76-2-214 reserved.

76-2-215. Accessory dwelling units — regulations — restrictions. (1) (a) In jurisdictional areas where the board of county commissioners has established zoning regulations under this part, the regulations must allow a minimum of one accessory dwelling unit by right on a lot or parcel that contains a single-family dwelling.

(b) An accessory dwelling unit may be attached, detached, or internal to the single-family dwelling on a lot or parcel.

(2) A county may not:

(a) require that an accessory dwelling unit match the exterior design, roof pitch, or finishing materials of the single-family dwelling;

(b) require that the single-family dwelling or the accessory dwelling unit be occupied by the owner;

(c) require a familial, marital, or employment relationship between the occupants of the single-family dwelling and the occupants of the accessory dwelling unit;

(d) assess impact fees on the construction of an accessory dwelling unit;

(e) require improvements to public streets as a condition of permitting an accessory dwelling unit, except as necessary to reconstruct or repair a public street that is disturbed as a result of the construction of the accessory dwelling unit;

(f) set maximum building heights, minimum setback requirements, minimum lot sizes, maximum lot coverages, or minimum building frontages for accessory dwelling units that are more restrictive than those for the single-family dwelling on the lot;

(g) impose more onerous development standards on an accessory dwelling unit beyond those set forth in this section; or

(h) require a restrictive covenant concerning an accessory dwelling unit on a parcel zoned for residential use by a single-family dwelling. This subsection (2)(h) may not be construed to prohibit restrictive covenants concerning accessory dwelling units entered into between private parties, but the county may not condition a permit, license, or use of an accessory dwelling unit on the adoption or implementation of a restrictive covenant entered into between private parties.

(3) Nothing in this section prohibits a county from regulating short-term rentals as defined in 15-68-101.

(4) A county may require a fee for reviewing applications to create accessory dwelling units. The one-time application fee may be up to $250 for each accessory dwelling unit. Nothing in this section prohibits a county from requiring its usual building fees in addition to the application fee.

(5) A county that has not adopted or amended regulations pursuant to this section by October 1, 2025, shall review and permit accessory dwelling units in accordance with the requirements of this section until regulations are adopted or amended. Regulations in effect on or after October 1, 2025, that apply to accessory dwelling units and do not comply with this section are void.

(6) The provisions of this section do not supersede applicable building codes, fire codes, or public health and safety regulations adopted pursuant to Title 50, chapter 2.

(7) (a) A county may require an expedited sanitation review as allowed in subsection (7)(b).

(b) The department of environmental quality shall provide for a 15-day expedited sanitation review under 76-4-130 for an accessory dwelling unit that is being added to a parcel with existing public water and wastewater service that has capacity for the accessory dwelling unit.

(8) Nothing in this section prohibits a county from adopting regulations that are more permissive than the accessory dwelling unit provisions provided in this section.

(9) For the purposes of this section:

(a) "accessory dwelling unit" means a self-contained living unit on the same parcel as a single-family dwelling of greater square footage that includes its own cooking, sleeping, and sanitation facilities and complies with or is otherwise exempt from any applicable building code, fire code, and public health and safety regulations adopted pursuant to Title 50, chapter 2;

(b) "by right" means the ability to be approved without requiring:

(i) a public hearing;

(ii) a variance, conditional use permit, special permit, or special exception; or

(iii) other discretionary zoning action other than a determination that a site plan conforms with applicable zoning regulations;

(c) "county" means a county that exercises zoning powers under this part;

(d) "gross floor area" means the interior habitable area of a single-family dwelling or an accessory dwelling unit; and

(e) "single-family dwelling" means a building with one or more rooms designed for residential living purposes by one household that is detached from any other dwelling unit.

(Subsection (7) terminates September 30, 2029—sec. 4, Ch. 619, L. 2025.)

History: En. Sec. 1, Ch. 619, L. 2025.

Compiler's Comments

Effective Date: This section is effective October 1, 2025.

Termination: Section 4, Ch. 619, L. 2025, provided that subsection (7) of this section terminates September 30, 2029.

76-2-216. Wholly surrounded county property — change of use — hearing. (1) If a county parcel for which zoning regulations have been adopted is wholly surrounded by municipal property and a change of an allowed use in the county zoning district occurs, the county governing body shall notify the municipality and all owners of municipal property within 300 feet of the county property of the change of use.

(2) Upon request of either the municipality or at least 10% of the property owners in the municipality who have received the notice, the county governing body shall hold a hearing on the change of use.

(3) If the county governing body determines, based on testimony provided at the hearing, that the regulations in the county district are no longer as compatible as possible with the municipal zoning ordinances as provided in 76-2-203(3), the county governing body may initiate a revision to the zoning district or amendments to the regulations as provided in this part.

History: En. Sec. 1, Ch. 274, L. 2013.

76-2-217 through 76-2-219 reserved.

76-2-220. Zoning commission — appointment — duties. (1) For the purpose of providing an optional method of amending any zoning regulations or zoning classification, the county commissioners may appoint a zoning commission to recommend amendments to the zoning regulations and classifications. Such a zoning commission must be composed of at least five citizen members appointed at large from the zoning district. The county commissioners may adopt bylaws for the zoning commission pertaining to the qualifications of the members and such other matters as the commissioners consider necessary.

(2) If a commission is appointed, it shall hold a public hearing to receive relevant testimony. The hearing, which may be held jointly with the hearing by the county commissioners, must be upon at least 15 days' notice of the time and place of the hearing and must be published in the contracted newspaper provided for in 18-7-411 or a newspaper of general circulation in the county. Recommendations of the zoning commission must be submitted to the county commissioners.

History: En. Sec. 1, Ch. 462, L. 1981.

76-2-221. Board of adjustment. (1) The board of county commissioners shall provide for the appointment of a board of adjustment and in the regulations and restrictions adopted pursuant to the authority of this part shall provide that the board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the zoning resolution in harmony with its general purposes and intent and in accordance with the general or specific rules of this part.

(2) The board of adjustment shall adopt rules in accordance with the provisions of any resolution adopted pursuant to this part. Meetings of the board of adjustment must be held at the call of the presiding officer and at times that the board may determine. The presiding officer or in the presiding officer's absence the acting presiding officer may administer oaths and compel the attendance of witnesses.

History: En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(part); amd. Sec. 2512, Ch. 56, L. 2009.

76-2-222. Membership and term of board members — vacancies. (1) The board of adjustment consists of five members, each to be appointed for a term of 2 years and removable for cause by the board of county commissioners upon written charges and after public hearing. The board of county commissioners may designate the same persons to act as members of the board of adjustment for unincorporated portions of the jurisdictional area as may be appointed by the municipality within the jurisdictional area under provisions of 76-2-321 through 76-2-328.

(2) Vacancies must be filled for the unexpired term of any member whose term becomes vacant.

History: En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(1); amd. Sec. 1, Ch. 47, L. 1987; amd. Sec. 275, Ch. 42, L. 1997.

76-2-223. Powers of board of adjustment. (1) The board of adjustment shall have the following powers:

(a) to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this part or of any resolution adopted pursuant thereto;

(b) to hear and decide special exceptions to the terms of the zoning resolution upon which said board is required to pass under such resolution;

(c) to authorize upon appeal in specific cases such variance from the terms of the resolution as will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of the resolution will result in unnecessary hardship and so that the spirit of the resolution shall be observed and substantial justice done.

(2) In exercising the above-mentioned powers, the board of adjustment may, in conformity with the provisions of this part, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken.

History: En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(5), (6).

76-2-224. Vote needed for board action. The concurring vote of three members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official; to decide in favor of the applicant on any matter upon which it is required to pass under any such resolution; or to effect any variation in such resolution.

History: En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(7).

76-2-225. Public access to board activities. (1) All meetings of the board shall be open to the public.

(2) The board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

History: En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(part).

Cross-References

Right of public participation, Art. II, sec. 8, Mont. Const.; Title 2, ch. 3, part 1.

Open meeting law, Art. II, sec. 9, Mont. Const.; Title 2, ch. 3, part 2.

76-2-226. Appeals to board of adjustment. (1) Appeals to the board of adjustment may be taken by any person or persons, jointly or severally, aggrieved by a decision of the administrative officer or by an officer, department, board, or bureau of the county affected by any decision of the administrative officer. The appeal must be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds of the appeal.

(2) The officer from whom the appeal is taken shall transmit to the board in a timely manner all papers constituting the record upon which the action appealed was taken.

(3) An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal has been filed with the officer that by reason of facts stated in the certificate a stay would, in the officer's opinion, cause imminent peril to life or property. In that case, proceedings may not be stayed except by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

(4) The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice of the hearing as well as due notice to the parties in interest, and decide the appeal within a reasonable time.

(5) At the hearing, a party may appear in person or by the party's attorney.

History: En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(3), (4); amd. Sec. 2513, Ch. 56, L. 2009; amd. Sec. 1, Ch. 171, L. 2015.

76-2-227. Appeals — board of county commissioners or board of adjustment to court of record — county commissioners may establish appeal process. (1) (a) The board of county commissioners may establish in the zoning regulations a process for an appeal of a decision by the board of adjustment to the board of county commissioners by any person or persons, jointly or severally, aggrieved by a decision of the board of adjustment or an officer, department, board, or bureau of the county.

(b) The process, if established, must provide that an appeal to the board of county commissioners be initiated by presenting to the board of county commissioners a petition, duly verified, specifying the grounds of the appeal.

(c) The petition must be presented to the board of county commissioners within 30 days after the filing of the decision of the board of adjustment, and a final decision must be made within 60 days of receipt of the petition.

(d) The board of county commissioners shall properly notice and hold a public hearing de novo.

(2) Any person or persons, jointly or severally, aggrieved by a decision of the board of county commissioners or the board of adjustment may present to a court of record a petition, duly verified, setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. The petition must be presented to the court within 30 days after the filing of the decision in the office of the appropriate board.

(3) Upon presentation of a petition, the court may allow a writ of certiorari directed to the board of county commissioners or the board of adjustment to review the decision of the board and shall prescribe in the writ the time within which a return must be made and served upon the relator's attorney, which may not be less than 10 days and may be extended by the court. The allowance of the writ may not stay proceedings upon the decision appealed from, but the court may, upon application, on notice to the board of county commissioners or the board of adjustment, and on due cause shown, grant a restraining order. The board of county commissioners or the board of adjustment may not be required to return the original papers acted upon by it, but it is sufficient to return certified or sworn copies of the original papers or of portions of the original papers that may be called for by the writ. The return must concisely set forth other facts that may be pertinent and material to show the grounds of the decision appealed from and must be verified.

(4) If, upon the hearing, it appears to the court that testimony is necessary for the proper disposition of the matter, the court may take evidence or appoint a referee to take evidence as it may direct and report the evidence to the court with the referee's findings of fact and conclusions of law, which constitute a part of the proceedings upon which the determination of the court must be made.

(5) The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

History: En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(8) thru (11); amd. Sec. 2514, Ch. 56, L. 2009; amd. Sec. 2, Ch. 171, L. 2015; amd. Sec. 1, Ch. 263, L. 2021.

76-2-228. Awarding of costs upon appeal from board decision. Costs may not be allowed against the board of county commissioners or the board of adjustment unless it appears to the court that it acted with gross negligence, in bad faith, or with malice in making the decision appealed from.

History: En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(12); amd. Sec. 3, Ch. 171, L. 2015.

76-2-229. Termination of zoning district. (1) (a) Real property owners in a zoning district may petition the board of county commissioners to submit a referendum to the registered electors residing in the zoning district to terminate the zoning district. The petition must be in writing and contain the signatures and addresses of 20% or more of the real property owners in the zoning district. The petition requesting a referendum for the termination of a zoning district must be delivered to the county clerk and recorder, who shall endorse on it the date when the petition was received and validate the signatures within 60 days of receipt of the petition. If the petition contains valid signatures of at least 20% of the real property owners within the zoning district, the county clerk and recorder shall notify the county commissioners.

(b) On receipt of a valid petition described in subsection (1)(a), the county commissioners shall submit the referendum to the registered electors residing in the district in an election conducted pursuant to Title 13, chapter 1, part 5.

(c) If the referendum described in subsection (1)(a) and conducted under subsection (1)(b) is not successful, the real property owners in the zoning district may not bring forth a subsequent referendum petition for 3 years from the date that the original referendum was submitted to the registered electors pursuant to subsection (1)(b).

(2) The board of county commissioners may, after providing notice as required in 76-2-205(1) and holding a public hearing, pass a resolution to terminate a zoning district if the county:

(a) has decided to comply with the provisions of the Montana Land Use Planning Act under Title 76, chapter 25, using the process specified in 76-25-105; or

(b) has established a larger zoning district pursuant to this part that encompasses the land within the zoning district to be terminated.

History: En. Sec. 1, Ch. 380, L. 2021; amd. Sec. 2, Ch. 325, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 325, L. 2025. Amendment effective October 1, 2025.

76-2-230 through 76-2-239 reserved.

76-2-240. Effect on amateur radio antenna. A resolution or rule adopted pursuant to this part may not:

(1) prevent the erection of an amateur radio antenna at heights and dimensions sufficient to accommodate amateur radio service communications by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States; or

(2) establish a maximum height limit for an amateur radio antenna of less than 100 feet above the ground.

History: En. Sec. 3, Ch. 56, L. 2013.

Part 3
Municipal Zoning

76-2-301. Municipal zoning authorized. For the purpose of promoting health, safety, morals, or the general welfare of the community, the city or town council or other legislative body of cities and incorporated towns is hereby empowered to regulate and restrict the height, number of stories, and size of buildings and other structures; the percentage of lot that may be occupied; the size of yards, courts, and other open spaces; the density of population; and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes.

History: En. Sec. 1, Ch. 136, L. 1929; re-en. Sec. 5305.1, R.C.M. 1935; R.C.M. 1947, 11-2701.

Cross-References

Incorporation of technical codes by reference, 7-5-4202.

76-2-302. Zoning districts. (1) For the purposes of 76-2-301, the local city or town council or other legislative body may divide the municipality into districts of the number, shape, and area as are considered best suited to carry out the purposes of this part. Within the districts, it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land, including the creation of zoning districts that allow tiny dwelling units.

(2) All regulations must be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

(3) (a) Zoning regulations adopted under this part may not treat manufactured housing or factory-built housing units differently from any other residential units.

(b) In a proceeding for a permit or variance to place manufactured housing or factory-built housing within a residential zoning district, there is a rebuttable presumption that placement of a manufactured home or factory-built home will not adversely affect property values of conventional housing.

(4) As used in this section, the following definitions apply:

(a) "Factory-built housing" means a factory-assembled structure intended for residential use that:

(i) is equipped with the necessary service connections but not made to be readily movable as a unit or units;

(ii) is designed to be used with a permanent foundation; and

(iii) is not certified by the United States department of housing and urban development but meets the inspection requirements of Title 50, chapter 60, part 4.

(b) "Manufactured housing" means a single-family dwelling, built offsite in a factory, that is in compliance with the applicable prevailing standards of the United States department of housing and urban development at the time of its production. A manufactured home does not include a mobile home or housetrailer, as defined in 15-1-101.

(c) (i) "Tiny dwelling unit" means a residential dwelling unit that is 350 to 750 square feet, is on a permanent foundation, and is used as a single-family dwelling for at least 45 days or longer.

(ii) Appendix Q, tiny houses, of the International Building Code as it was printed on January 1, 2023, may govern all other requirements of a tiny dwelling unit that is 350 to 750 square feet.

(5) This section may not be construed to limit conditions imposed in historic districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant to Title 70, chapter 17, part 2. Local design review standards imposed by a local government must be clear, objective, and necessary to protect public health or safety or to comply with federal law.

(6) Zoning regulations may not include a requirement to:

(a) pay a fee for the purpose of providing housing for specified income levels or at specified sale prices; or

(b) dedicate real property for the purpose of providing housing for specified income levels or at specified sale prices.

(7) A dedication of real property as prohibited in subsection (6)(b) includes a payment or other contribution to a local housing authority or the reservation of real property for future development of housing for specified income levels or specified sale prices.

(8) When reviewing an application for a zoning permit or variance from local design review standards, the determination of compliance with local design review standards as provided in subsection (5) must be conducted by employees of the municipality, and the municipality may not require review by an external board.

History: En. Sec. 2, Ch. 136, L. 1929; re-en. Sec. 5305.2, R.C.M. 1935; amd. Sec. 1, Ch. 273, L. 1971; amd. Sec. 1, Ch. 354, L. 1973; R.C.M. 1947, 11-2702(1); amd. Sec. 2, Ch. 505, L. 1993; amd. Sec. 276, Ch. 42, L. 1997; amd. Sec. 237, Ch. 542, L. 2005; amd. Sec. 5, Ch. 249, L. 2021; amd. Sec. 2, Ch. 178, L. 2023; amd. Sec. 1, Ch. 501, L. 2023; amd. Sec. 5, Ch. 369, L. 2025; amd. Sec. 3, Ch. 376, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 5, Ch. 369, L. 2025. Amendment effective May 5, 2025.

See 2025 Session Law for amendment made by sec. 3, Ch. 376, L. 2025. Amendment effective October 1, 2025.

Cross-References

Imposition of fee or dedication on owner of addition prohibited, 7-2-4203.

Imposition of fee or dedication by local governing body resolution prohibited, 76-2-114.

Imposition of fee or dedication in zoning regulations prohibited, 76-2-203.

Imposition of fee or dedication by local governing body as condition of approval of subdivision prohibited, 76-3-514.

76-2-303. Procedure to administer certain annexations and zoning laws — hearing and notice. (1) (a) A regulation, restriction, or boundary may be determined, established, enforced, amended, supplemented, changed, modified, or repealed in conformance with this section.

(b) The city or town council or other legislative body of a municipality shall provide for the manner in which regulations and restrictions and the boundaries of districts are determined, established, enforced, amended, supplemented, changed, modified, or repealed subject to the requirements of subsection (2).

(2) (a) The determination, establishment, enforcement, amendment, supplement, change, modification, or repeal of a regulation, restriction, or boundary may not become effective until after a public hearing in relation to the regulation, restriction, or boundary at which parties in interest and citizens have an opportunity to be heard has been held. Notice of the time and place of the hearing must be published as provided in 7-1-4127 for a time period in accordance with 7-1-4127(7)(b).

(b) If a zone map boundary only is proposed to be amended, supplemented, changed, modified, or repealed, the city or town council or other legislative body of the municipality shall

adopt the boundary change by resolution. The adoption of the boundary change by resolution is effective immediately.

(3) (a) For municipal annexations, a municipality may conduct a hearing on the annexation in conjunction with a hearing on the zoning of the proposed annexation if the proposed municipal zoning regulations for the annexed property:

(i) authorize land uses comparable to the land uses authorized by county zoning;

(ii) authorize land uses that are consistent with land uses approved by the board of county commissioners or the board of adjustment pursuant to Title 76, chapter 2, part 1 or 2; or

(iii) are consistent with zoning requirements recommended in a growth policy adopted pursuant to Title 76, chapter 1, for the annexed property.

(b) A joint hearing authorized under this subsection (3) fulfills a municipality's obligation regarding zoning notice and public hearing for a proposed annexation.

History: En. Sec. 4, Ch. 136, L. 1929; re-en. Sec. 5305.4, R.C.M. 1935; R.C.M. 1947, 11-2704; amd. Sec. 1, Ch. 217, L. 1997; amd. Sec. 1, Ch. 355, L. 1999; Sec. 34, Ch. 582, L. 1999; amd. Sec. 5, Ch. 87, L. 2003; amd. Sec. 40, Ch. 19, L. 2011; amd. Sec. 9, Ch. 272, L. 2025; amd. Sec. 1, Ch. 510, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 9, Ch. 272, L. 2025. Amendment effective October 1, 2025.

See 2025 Session Law for amendment made by sec. 1, Ch. 510, L. 2025. Amendment effective October 1, 2025.

Cross-References

Publication of legal notices, Title 18, ch. 7, part 2; 18-7-411.

76-2-304. *(Temporary)* **Criteria and guidelines for zoning regulations.** (1) Zoning regulations must be:

(a) made in accordance with a growth policy; and

(b) designed to:

(i) secure safety from fire and other dangers;

(ii) promote public health, public safety, and the general welfare; and

(iii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

(2) In the adoption of zoning regulations, the municipal governing body shall consider:

(a) reasonable provision of adequate light and air;

(b) the effect on motorized and nonmotorized transportation systems;

(c) promotion of compatible urban growth;

(d) the character of the district and its peculiar suitability for particular uses; and

(e) conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

(3) In a city with a population of at least 5,000 residents, duplex housing must be allowed as a permitted use on a lot where a single-family residence is a permitted use, and zoning regulations that apply to the development or use of duplex housing may not be more restrictive than zoning regulations that are applicable to single-family residences.

(4) (a) In a municipality that is designated as an urban area by the United States census bureau with a population over 5,000 as of the most recent census, the city council or other legislative body of the municipality shall allow as a permitted use multiple-unit dwellings and mixed-use developments that include multiple-unit dwellings on a parcel or lot that:

(i) has a will-serve letter from both a municipal water system and a municipal sewer system; and

(ii) is located in a commercial zone.

(b) Zoning regulations in municipalities meeting the requirements of subsection (4)(a) may not include a requirement to provide more than:

(i) one off-street parking space for each unit and accessible parking spaces as required by the Americans With Disabilities Act of 1990, 42 U.S.C. 12101, et seq.; or

(ii) an equivalent number of spaces required under subsection (4)(b)(i) provided through a shared parking agreement.

(5) As used in this section, the following definitions apply:

(a) "Duplex housing" means a parcel or lot with two dwelling units that are designed for residential occupancy by not more than two family units living independently from each other.

(b) "Family unit" means:

(i) a single person living or residing in a dwelling or place of residence; or

(ii) two or more persons living together or residing in the same dwelling or place of residence.

(c) "Mixed-use development" means a development consisting of residential and nonresidential uses in which the nonresidential uses are less than 50% of the total square footage of the development and are limited to the first floor of buildings that are two or more stories.

(d) "Multiple-unit dwelling" means a building designed for five or more dwelling units in which the dwelling units share a common separation like a ceiling or wall and in which access cannot be gained between units through an internal doorway, excluding common hallways.

(e) "Single-family residence" has the meaning provided in 70-24-103.

76-2-304. *(Effective October 1, 2026)* **Criteria and guidelines for zoning regulations.** (1) Zoning regulations must be:

(a) made in accordance with a growth policy; and

(b) designed to:

(i) secure safety from fire and other dangers;

(ii) promote public health, public safety, and the general welfare; and

(iii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

(2) In the adoption of zoning regulations, the municipal governing body shall consider:

(a) reasonable provision of adequate light and air;

(b) the effect on motorized and nonmotorized transportation systems;

(c) promotion of compatible urban growth;

(d) the character of the district and its peculiar suitability for particular uses; and

(e) conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

(3) In a city with a population of at least 5,000 residents, duplex housing must be allowed as a permitted use on a lot where a single-family residence is a permitted use, and zoning regulations that apply to the development or use of duplex housing may not be more restrictive than zoning regulations that are applicable to single-family residences.

(4) (a) In a municipality that is designated as an urban area by the United States census bureau with a population over 5,000 as of the most recent census, the city council or other legislative body of the municipality shall allow as a permitted use multiple-unit dwellings and mixed-use developments that include multiple-unit dwellings on a parcel or lot that:

(i) has a will-serve letter from both a municipal water system and a municipal sewer system; and

(ii) is located in a commercial zone.

(b) Zoning regulations in municipalities meeting the requirements of subsection (4)(a) may not include a requirement to provide:

(i) more than one off-street parking space for each unit and accessible parking spaces as required by the Americans With Disabilities Act of 1990, 42 U.S.C. 12101, et seq.;

(ii) more than an equivalent number of spaces required under subsection (4)(b)(i) provided through a shared parking agreement; or

(iii) a height restriction of less than 60 feet on buildings that are located in downtown commercial, heavy commercial, or industrial zones.

(5) Except to provide accessible parking spaces as required by the Americans With Disabilities Act of 1990, 42 U.S.C. 12101, et seq., zoning regulations may not include provisions that require:

(a) more than one parking space for each residential dwelling unit;

(b) any minimum parking requirement for:

(i) existing buildings, including vacant buildings, undergoing a change of use;

(ii) child-care facilities licensed or registered by the department of public health and human services;

(iii) deed-restricted affordable housing; or

(iv) assisted living facilities; or

(c) more than one-half parking space for each residential unit under 1,200 square feet.

(6) Nothing in this part restricts a property owner, developer, or builder from providing more parking spaces than the minimum number of parking spaces required in zoning regulations adopted under this part.

(7) As used in this section, the following definitions apply:

(a) "Duplex housing" means a parcel or lot with two dwelling units that are designed for residential occupancy by not more than two family units living independently from each other.

(b) "Family unit" means:

(i) a single person living or residing in a dwelling or place of residence; or

(ii) two or more persons living together or residing in the same dwelling or place of residence.

(c) "Mixed-use development" means a development consisting of residential and nonresidential uses in which the nonresidential uses are less than 50% of the total square footage of the development and are limited to the first floor of buildings that are two or more stories.

(d) "Multiple-unit dwelling" means a building designed for five or more dwelling units in which the dwelling units share a common separation like a ceiling or wall and in which access cannot be gained between units through an internal doorway, excluding common hallways.

(e) "Single-family residence" has the meaning provided in 70-24-103.

History: En. Sec. 3, Ch. 136, L. 1929; re-en. Sec. 5305.3, R.C.M. 1935; R.C.M. 1947, 11-2703; amd. Sec. 17, Ch. 582, L. 1999; amd. Sec. 6, Ch. 87, L. 2003; amd. Sec. 11, Ch. 446, L. 2009; amd. Sec. 1, Ch. 445, L. 2023; amd. Sec. 1, Ch. 499, L. 2023; amd. Sec. 1, Ch. 591, L. 2025; amd. Sec. 1, Ch. 682, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 1, Ch. 591, L. 2025. Amendment effective October 1, 2026.

See 2025 Session Law for amendment made by sec. 1, Ch. 682, L. 2025. Amendment effective October 1, 2026.

76-2-305. Repealed. Sec. 2, Ch. 510, L. 2025.

History: En. Sec. 5, Ch. 136, L. 1929; re-en. Sec. 5305.5, R.C.M. 1935; amd. Sec. 1, Ch. 161, L. 1969; R.C.M. 1947, 11-2705; amd. Sec. 1, Ch. 492, L. 1999; amd. Sec. 1, Ch. 88, L. 2011.

76-2-306. Interim zoning ordinances. (1) Except as provided in 76-2-340, the city or town council or other legislative body of the municipality, to protect the public safety, health, and welfare and without following the procedures otherwise required prior to the adoption of a zoning ordinance, may adopt as an urgency measure an interim zoning ordinance prohibiting any uses that may be in conflict with a contemplated zoning proposal that the legislative body is considering or studying or intends to study within a reasonable time.

(2) An interim zoning ordinance may be applicable only within the city limits and up to 1 mile beyond the corporate boundaries of the city or town and takes effect upon passage if a hearing is first held upon notice reasonably designed to inform all affected parties. A notice must be published as provided in 7-1-4127.

(3) An interim zoning ordinance is no longer in effect 6 months from the date of its adoption. However, after notice pursuant to 76-2-303 and pursuant to public hearing, the legislative body may extend the interim zoning ordinance for 1 year. Any extension requires a two-thirds vote for passage and becomes effective upon passage. No more than two extensions may be adopted.

History: En. 11-2711 by Sec. 1, Ch. 488, L. 1975; R.C.M. 1947, 11-2711; amd. Sec. 6, Ch. 56, L. 2013; amd. Sec. 10, Ch. 272, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 10, Ch. 272, L. 2025. Amendment effective October 1, 2025.

76-2-307. Zoning commission. In order to avail itself of the powers conferred by this part, except 76-2-306, the city or town council or other legislative body shall appoint a commission, to be known as the zoning commission, to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and such city or town council or other legislative body shall not hold its public hearings or take action until it has received the final report of such commission.

History: En. Sec. 6, Ch. 136, L. 1929; re-en. Sec. 5305.6, R.C.M. 1935; R.C.M. 1947, 11-2706.

Cross-References

City-County Planning Boards, Title 76, ch. 1.

76-2-308. Enforcement and interpretation of zoning regulations and ordinances. (1) The city or town council or other legislative body may provide by ordinance for the enforcement of this part and of a regulation or ordinance made under the provisions of this part.

(2) In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used in violation of this part or of any ordinance or other regulation made under authority conferred by this part, the proper local authorities of the municipality, in addition to other remedies, may institute any appropriate action or proceedings to:

(a) prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;

(b) restrain, correct, or abate a violation;

(c) prevent the occupancy of the building, structure, or land; or

(d) prevent any illegal act, conduct, business, or use in or near the premises.

(3) In interpreting a use and in determining whether a use violates this part or a resolution adopted under this part, any ambiguity or uncertainty in the zoning regulations as to whether the use is in violation must be interpreted in favor of the use in question.

History: En. Sec. 8, Ch. 136, L. 1929; re-en. Sec. 5305.8, R.C.M. 1935; R.C.M. 1947, 11-2708(part); amd. Sec. 8, Ch. 266, L. 1979; amd. Sec. 6, Ch. 369, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 6, Ch. 369, L. 2025. Amendment effective May 5, 2025.

76-2-309. Conflict with other laws. (1) Wherever the regulations made under authority of this part require a greater width or size of yards, courts, or other open spaces, require a lower height of building or a fewer number of stories, require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this part must govern.

(2) Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts, or other open spaces, require a lower height of building or a fewer number of stories, require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this part, except for restrictions provided in 76-2-304(3) and (4), the provisions of the other statute or local ordinance or regulation must govern.

History: En. Sec. 9, Ch. 136, L. 1929; re-en. Sec. 5305.9, R.C.M. 1935; R.C.M. 1947, 11-2709; amd. Sec. 2, Ch. 445, L. 2023; amd. Sec. 2, Ch. 499, L. 2023.

76-2-310. Extension of municipal zoning and subdivision regulations beyond municipal boundaries — termination of authority for extension. (1) A city or town council or other legislative body that has adopted a growth policy pursuant to chapter 1 or a land use plan pursuant to chapter 25 for the area to be affected by the regulations may extend the application of its zoning or subdivision regulations beyond its limits in any direction subject to the following limits:

(a) up to 3 miles beyond the limits of a city of the first class as defined in 7-1-4111;

(b) up to 2 miles beyond the limits of a city of the second class; and

(c) up to 1 mile beyond the limits of a city or town of the third class.

(2) (a) The authority granted to a city or town to apply zoning beyond its limits pursuant to subsection (1) is terminated when the county in which the city or town is located adopts zoning regulations for the area pursuant to Title 76, chapter 2.

(b) The authority granted to a city or town to apply its subdivision regulations beyond its limits pursuant to subsection (1) is terminated when the county in which the city or town is located adopts subdivision regulations for the area pursuant to Title 76, chapter 3.

(3) When two or more noncontiguous cities have boundaries so near to one another as to create an area of potential conflict in the event that all cities concerned should exercise the full powers conferred by 76-2-302, 76-2-311, and this section, then the extension of zoning or subdivision regulations, or both, by these cities must terminate at a boundary line agreed upon by the cities.

History: En. Sec. 2, Ch. 136, L. 1929; re-en. Sec. 5305.2, R.C.M. 1935; amd. Sec. 1, Ch. 273, L. 1971; amd. Sec. 1, Ch. 354, L. 1973; R.C.M. 1947, 11-2702(part); amd. Sec. 18, Ch. 582, L. 1999; amd. Sec. 9, Ch. 599, L. 2003; amd. Sec. 4, Ch. 555, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 555, L. 2025. Amendment effective May 8, 2025.

76-2-311. Administration of regulations in extended area. (1) A city or town council or other legislative body may enforce regulations adopted pursuant to 76-2-310, as if the property were situated within its corporate limits, until the county board adopts a growth policy pursuant to chapter 1 and accompanying zoning or subdivision resolutions that include the area.

(2) As a prerequisite to the exercise of this power, a city-county planning board whose jurisdictional area includes the area to be regulated must be formed or an existing city planning board must be increased to include two representatives from the unincorporated area that is to be affected. These representatives must be appointed by the board of county commissioners. Representation must cease when the county board adopts a growth policy pursuant to chapter 1 and accompanying zoning or subdivision resolutions that include the area.

History: En. Sec. 2, Ch. 136, L. 1929; re-en. Sec. 5305.2, R.C.M. 1935; amd. Sec. 1, Ch. 273, L. 1971; amd. Sec. 1, Ch. 354, L. 1973; R.C.M. 1947, 11-2702(part); amd. Sec. 19, Ch. 582, L. 1999.

76-2-312. Exclusion for commission-manager plan municipalities. A city or town which has as its plan of government the commission-manager plan shall be excluded from the provisions of 76-2-310 and 76-2-311 which define extraterritorial authority to review proposed subdivisions.

History: En. Sec. 2, Ch. 136, L. 1929; re-en. Sec. 5305.2, R.C.M. 1935; amd. Sec. 1, Ch. 273, L. 1971; amd. Sec. 1, Ch. 354, L. 1973; R.C.M. 1947, 11-2702(part).

76-2-313. Renumbered 76-2-411. Code Commissioner, 1983.

76-2-314. Renumbered 76-2-412. Code Commissioner, 1983.

76-2-315. Violations and penalties. (1) A violation of this part or of such ordinance or regulation made pursuant to 76-2-308(1) is a misdemeanor, and such city or town council or other legislative body may provide for the punishment thereof by fine or imprisonment or both.

(2) It is also empowered to provide civil penalties for such violation.

History: En. Sec. 8, Ch. 136, L. 1929; re-en. Sec. 5305.8, R.C.M. 1935; R.C.M. 1947, 11-2708(part); amd. Sec. 9, Ch. 266, L. 1979.

76-2-316. Continuation of nonconforming uses. (1) The zoning regulations must allow for the nonconforming use of land or buildings legal at the time or prior to the time that a zoning regulation or amendment to the regulation is adopted, but the local government may provide grounds for discontinuing nonconforming uses based on changes to or abandonment of the use of the land or buildings after the adoption of a zoning regulation or amendment.

(2) Any ambiguity or uncertainty in the zoning regulations as to whether a nonconforming use is allowed or whether the use was allowed when it was commenced must be interpreted in favor of the use in question.

History: En. Sec. 7, Ch. 369, L. 2025.

Compiler's Comments

Effective Date: Section 10, Ch. 369, L. 2025, provided: "[This act] is effective on passage and approval." Approved May 5, 2025.

76-2-317 through 76-2-320 reserved.

76-2-321. Board of adjustment. (1) A city or town council or other legislative body may provide for the appointment of a board of adjustment and in the regulations and restrictions adopted pursuant to the authority of this part may provide that the board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purposes and intent and in accordance with the general or specific rules contained in the ordinance.

(2) An ordinance adopted pursuant to this section providing for a board of adjustment may restrict the authority of the board and provide that the city or town council or other legislative body reserves to itself the power to make certain exceptions to regulations, ordinances, or land use plans adopted pursuant to this part.

(3) The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this part. Meetings of the board must be held at the call of the presiding officer and at other times that the board may determine. The presiding officer or in the presiding officer's absence the acting presiding officer may administer oaths and compel the attendance of witnesses.

History: En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(part); amd. Sec. 2515, Ch. 56, L. 2009.

76-2-322. Membership and term of board members — vacancies. (1) The board of adjustment shall consist of not less than five or more than seven members to be appointed for a term to be specified by the city or town council or other legislative body or, if no term is specified, then for a term of 3 years. A member is removable for cause by the appointing authority upon written charges and after public hearing.

(2) Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

History: En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(1); amd. Sec. 1, Ch. 67, L. 1985; amd. Sec. 1, Ch. 110, L. 1987.

76-2-323. Powers of board of adjustment. (1) The board of adjustment shall have the following powers:

(a) to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this part or of any ordinance adopted pursuant thereto;

(b) to hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance;

(c) to authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship and so that the spirit of the ordinance shall be observed and substantial justice done.

(2) In exercising the above-mentioned powers, such board may, in conformity with the provisions of this part, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken.

History: En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(5), (6).

76-2-324. Vote needed for board action. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official; to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance; or to effect any variation in such ordinance.

History: En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(7).

76-2-325. Public access to board activities. (1) All meetings of the board shall be open to the public.

(2) The board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

History: En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(part).

Cross-References

Right of public participation, Art. II, sec. 8, Mont. Const.; Title 2, ch. 3, part 1.

Open meeting law, Art. II, sec. 9, Mont. Const.; Title 2, ch. 3, part 2.

76-2-326. Appeals to board of adjustment. (1) Appeals to the board of adjustment may be taken by a person aggrieved or by an officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. An appeal must be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from

whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds of the appeal.

(2) The officer from whom the appeal is taken shall, in a timely manner, transmit to the board all papers constituting the record upon which the action appealed was taken.

(3) An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal has been filed with the officer that by reason of facts stated in the certificate a stay would, in the officer's opinion, cause imminent peril to life or property. In that case, proceedings may not be stayed except by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

(4) The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice of the hearing as well as due notice to the parties in interest, and decide the appeal within a reasonable time.

(5) At the hearing, any party may appear in person or by the party's attorney.

History: En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(3), (4); amd. Sec. 2516, Ch. 56, L. 2009.

76-2-327. Appeals from board to court of record. (1) Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment or any taxpayer or any officer, department, board, or bureau of the municipality may present to a court of record a petition, duly verified, setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. The petition must be presented to the court within 30 days after the filing of the decision in the office of the board.

(2) Upon the presentation of the petition, the court may allow a writ of certiorari directed to the board of adjustment to review the decision of the board of adjustment and shall prescribe in the writ the time within which a return must be made and served upon the relator's attorney, which may not be less than 10 days and may be extended by the court. The allowance of the writ does not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board, and on due cause shown, grant a restraining order. The board of adjustment may not be required to return the original papers acted upon by it, but it is sufficient to return certified or sworn copies of the original papers or of portions of the original papers that may be called for by the writ. The return must concisely set forth other facts that may be pertinent and material to show the grounds of the decision appealed from and must be verified.

(3) If, upon the hearing, it appears to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take evidence that it may direct and report the evidence to the court with the referee's findings of fact and conclusions of law, which constitute a part of the proceedings upon which the determination of the court must be made.

(4) The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

History: En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(8) thru (11); amd. Sec. 2517, Ch. 56, L. 2009.

76-2-328. Awarding of costs upon appeal from board decision. Costs shall not be allowed against the board unless it shall appear to the court that it acted with gross negligence, in bad faith, or with malice in making the decision appealed from.

History: En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(12).

76-2-329 through 76-2-339 reserved.

76-2-340. Effect on amateur radio antenna. A resolution or rule adopted pursuant to this part may not:

(1) prevent the erection of an amateur radio antenna at heights and dimensions sufficient to accommodate amateur radio service communications by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States; or

(2) establish a maximum height limit for an amateur radio antenna of less than 100 feet above the ground.

History: En. Sec. 4, Ch. 56, L. 2013.

76-2-341 through 76-2-344 reserved.

76-2-345. Accessory dwelling units — regulations — restrictions. (1) (a) A municipality shall adopt regulations under this chapter that allow a minimum of one accessory dwelling unit by right on a lot or parcel that contains a single-family dwelling.

(b) An accessory dwelling unit may be attached, detached, or internal to the single-family dwelling on a lot or parcel.

(c) If the accessory dwelling unit is detached from or attached to the single-family dwelling, it may not be more than 75% of the gross floor area of the single-family dwelling or 1,000 square feet, whichever is less.

(2) A municipality may not:

(a) require that a lot or parcel have additional parking to accommodate an accessory dwelling unit or require fees in lieu of additional parking;

(b) require that an accessory dwelling unit match the exterior design, roof pitch, or finishing materials of the single-family dwelling;

(c) require that the single-family dwelling or the accessory dwelling unit be occupied by the owner;

(d) require a familial, marital, or employment relationship between the occupants of the single-family dwelling and the occupants of the accessory dwelling unit;

(e) assess impact fees on the construction of an accessory dwelling unit;

(f) require improvements to public streets as a condition of permitting an accessory dwelling unit, except as necessary to reconstruct or repair a public street that is disturbed as a result of the construction of the accessory dwelling unit;

(g) set maximum building heights, minimum setback requirements, minimum lot sizes, maximum lot coverages, or minimum building frontages for accessory dwelling units that are more restrictive than those for the single-family dwelling on the lot;

(h) impose more onerous development standards on an accessory dwelling unit beyond those set forth in this section; or

(i) require a restrictive covenant concerning an accessory dwelling unit on a parcel zoned for residential use by a single-family dwelling. This subsection (2)(i) may not be construed to prohibit restrictive covenants concerning accessory dwelling units entered into between private parties, but the municipality may not condition a permit, license, or use of an accessory dwelling unit on the adoption or implementation of a restrictive covenant entered into between private parties.

(3) Nothing in this section prohibits a municipality from regulating short-term rentals as defined in 15-68-101.

(4) A municipality may require a fee for reviewing applications to create accessory dwelling units. The one-time application fee may be up to $250 for each accessory dwelling unit. Nothing in this section prohibits a municipality from requiring its usual building fees in addition to the application fee.

(5) A municipality that has not adopted or amended regulations pursuant to this section by January 1, 2024, shall review and permit accessory dwelling units in accordance with the requirements of this section until regulations are adopted or amended. Regulations in effect on or after January 1, 2024, that apply to accessory dwelling units and do not comply with this section are void.

(6) The provisions of this section do not supersede applicable building codes, fire codes, or public health and safety regulations adopted pursuant to Title 50, chapter 2.

(7) A municipality may require an accessory dwelling unit to have a will-serve letter from both a municipal water system and a municipal sewer system.

(8) Nothing in this section prohibits a municipality from adopting regulations that are more permissive than the accessory dwelling unit provisions provided in this section.

(9) For the purposes of this section:

(a) "accessory dwelling unit" means a self-contained living unit on the same parcel as a single-family dwelling of greater square footage that includes its own cooking, sleeping, and sanitation facilities and complies with or is otherwise exempt from any applicable building code, fire code, and public health and safety regulations adopted pursuant to Title 50, chapter 2.

(b) "by right" means the ability to be approved without requiring:

(i) a public hearing;

(ii) a variance, conditional use permit, special permit, or special exception; or

(iii) other discretionary zoning action other than a determination that a site plan conforms with applicable zoning regulations;

(c) "gross floor area" means the interior habitable area of a single-family dwelling or an accessory dwelling unit;

(d) "municipality" means an incorporated city, town, or consolidated city-county that exercises zoning powers under this part; and

(e) "single-family dwelling" means a building with one or more rooms designed for residential living purposes by one household that is detached from any other dwelling unit.

History: En. Sec. 1, Ch. 502, L. 2023.

Part 4
Application to Governmental Agencies Group and Foster Homes

76-2-401. Definitions. As used in 76-2-402, the following definitions apply:

(1) "Agency" means a board, bureau, commission, department, an authority, or other entity of state or local government.

(2) "Local zoning regulations" means zoning regulations adopted pursuant to Title 76, chapter 2.

History: En. Sec. 1, Ch. 397, L. 1981.

76-2-402. Local zoning regulations — application to agencies. (1) Whenever an agency proposes to use public land contrary to local zoning regulations, a public hearing must be held and the agency shall attend the public hearing.

(2) The local governing body shall hold a hearing within 30 days of the date the agency gives notice to the local governing body of its intent to develop land contrary to local zoning regulations.

History: En. Sec. 2, Ch. 397, L. 1981; amd. Sec. 1, Ch. 362, L. 2021.

76-2-403 through 76-2-410 reserved.

76-2-411. Definition of community residential facility. "Community residential facility" means:

(1) a community group home for developmentally, mentally, or severely disabled persons that does not provide skilled or intermediate nursing care;

(2) a youth foster home, a kinship foster home, a youth shelter care facility, a transitional living program, or youth group home as defined in 52-2-602;

(3) a halfway house operated in accordance with regulations of the department of public health and human services for the rehabilitation of alcoholics or drug dependent persons;

(4) a licensed adult foster family care home; or

(5) an assisted living facility licensed under 50-5-227.

History: En. Sec. 1, Ch. 350, L. 1973; amd. Sec. 1, Ch. 129, L. 1974; amd. Sec. 6, Ch. 364, L. 1975; R.C.M. 1947, 11-2702.1; MCA 1981, 76-2-313; redes. 76-2-411 by Code Commissioner, 1983; amd. Sec. 28, Ch. 465, L. 1983; amd. Sec. 1, Ch. 309, L. 1985; amd. Sec. 9, Ch. 514, L. 1987; amd. Sec. 236, Ch. 418, L. 1995; amd. Sec. 545, Ch. 546, L. 1995; amd. Secs. 1, 2, Ch. 400, L. 2003; amd. Sec. 31, Ch. 504, L. 2003.

76-2-412. Relationship of foster homes, kinship foster homes, youth shelter care facilities, youth group homes, community residential facilities, and day-care homes to zoning. (1) A foster home, kinship foster home, youth shelter care facility, or youth group home operated under the provisions of 52-2-621 through 52-2-623 or a community residential facility serving eight or fewer persons is considered a residential use of property for purposes of zoning if the home provides care on a 24-hour-a-day basis.

(2) A family day-care home or a group day-care home, as defined in 52-2-703, is considered a residential use of property for purposes of zoning.

(3) The facilities listed in subsections (1) and (2) are a permitted use in all residential zones, including but not limited to residential zones for single-family dwellings. Any safety or sanitary regulation of the department of public health and human services or any other agency of the state or a political subdivision of the state that is not applicable to residential occupancies in general may not be applied to a community residential facility serving 8 or fewer persons or to a day-care home serving 15 or fewer children.

(4) This section may not be construed to prohibit a city or county from requiring a conditional use permit in order to maintain a home pursuant to the provisions of subsection (1) if the home is licensed by the department of public health and human services. A city or county may not require a conditional use permit in order to maintain a day-care home.

History: En. Sec. 2, Ch. 350, L. 1973; amd. Sec. 2, Ch. 129, L. 1974; R.C.M. 1947, 11-2702.2; MCA 1981, 76-2-314; redes. 76-2-412 by Code Commissioner, 1983; amd. Sec. 29, Ch. 465, L. 1983; amd. Sec. 1, Ch. 181, L. 1987; amd. Sec. 237, Ch. 418, L. 1995; amd. Sec. 546, Ch. 546, L. 1995; amd. Sec. 32, Ch. 504, L. 2003; amd. Sec. 1, Ch. 553, L. 2023.

Parts 5 through 8 reserved

Part 9
Agricultural Activities

76-2-901. Agricultural activities — legislative finding and purpose. (1) The legislature finds that agricultural lands and the ability and right of farmers and ranchers to produce a safe, abundant, and secure food and fiber supply have been the basis of economic growth and development of all sectors of Montana's economy. In order to sustain Montana's valuable farm economy and land bases associated with it, farmers and ranchers must be encouraged and have the right to stay in farming.

(2) It is therefore the intent of the legislature to protect agricultural activities from governmental zoning and nuisance ordinances.

History: En. Sec. 1, Ch. 309, L. 1995.

Cross-References

Definition of public nuisance, 27-30-101.

76-2-902. Definitions. As used in this part, the following definitions apply:

(1) "Agricultural activity" means a condition or activity that provides an annual gross income of not less than $1,500 or that occurs on land classified as agricultural or forest land for taxation purposes. The condition or activity must occur in connection with the commercial production of farm products and includes but is not limited to:

(a) produce marketed at roadside stands or farm markets;

(b) noise;

(c) odors;

(d) dust;

(e) fumes;

(f) operation of machinery and irrigation pumps;

(g) movement of water for agricultural activities, including but not limited to use of existing county road ditches, streams, rivers, canals, and drains, and use of water for agricultural activities;

(h) ground and aerial application of seed, fertilizers, conditioners, and plant protection products;

(i) employment and use of labor;

(j) roadway movement of equipment and livestock;

(k) protection from damage from wildlife;

(l) prevention of trespass;

(m) construction and maintenance of buildings, fences, roads, bridges, ponds, drains, waterways, and similar features and maintenance of streambanks and watercourses;

(n) conversion from one agricultural activity to another, provided that the conversion does not adversely impact adjacent property owners;

(o) timber harvesting, thinning, and timber regeneration;
(p) burning and stubble and slash disposal; and
(q) plant nursery and commercial greenhouse activities.

(2) "Commercial production of farm products" means the growing, raising, or marketing of plants or animals by the owner, owner's agent, or lessee of land that provides an annual gross income of not less than $1,500 or that occurs on land that is classified as agricultural or forest land for taxation purposes. The term includes but is not limited to:

(a) forages and sod crops;
(b) dairy and dairy products;
(c) poultry and poultry products;
(d) livestock, including breeding, feeding, and grazing of livestock and recreational equine use;
(e) fruits;
(f) vegetables;
(g) flowers;
(h) seeds;
(i) grasses;
(j) trees, including commercial timber;
(k) fresh water fish and fish products;
(l) apiaries;
(m) equine and other similar products; or
(n) any other product that incorporates the use of food, feed, fiber, or fur.

History: En. Sec. 2, Ch. 309, L. 1995.

76-2-903. Local ordinances. A city, county, taxing district, or other political subdivision of this state may not adopt an ordinance or resolution that prohibits any existing agricultural activities or forces the termination of any existing agricultural activities outside the boundaries of an incorporated city or town. Zoning and nuisance ordinances may not prohibit agricultural activities that were established outside the corporate limits of a municipality and then incorporated into that municipality by annexation.

History: En. Sec. 3, Ch. 309, L. 1995.

Part 10
Digital Asset Mining

76-2-1001 and 76-2-1002 reserved.

76-2-1003. Right to mine digital assets. (1) A governing body of a city or town, the governing bodies of more than one city or town, the governing body of a county, or any combination of those governing bodies may not enact an ordinance, resolution, or rule that:

(a) imposes requirements on a digital asset mining business that are not also requirements for data centers in its area of jurisdiction;
(b) prevents a digital asset mining business from operating in an area zoned for industrial use; or
(c) prevents home digital asset mining at a private residence, except as related to existing noise ordinances.

(2) Any digital asset mining business operating on or before May 2, 2023, may continue to operate regardless of any change in zoning or regulations.

History: En. Sec. 3, Ch. 344, L. 2023.

CHAPTER 3
LOCAL REGULATION OF SUBDIVISIONS

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76-3-621. Park dedication requirement.
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Chapter Cross-References

Municipal subdivisions required to conform to subdivision laws, 7-3-4445.
Duty to notify weed management district when proposed project will disturb land, 7-22-2152.
Conservation easements preventing subdivision of land, 76-6-203.
Water use — ground water, Title 85, ch. 2, part 5.

Part 1
General Provisions

Part Cross-References

Conservation easements preventing subdivision of land, 76-6-203.

76-3-101. Short title. This chapter may be cited as the "Montana Subdivision and Platting Act".

History: En. Sec. 1, Ch. 500, L. 1973; R.C.M. 1947, 11-3859.

76-3-102. Statement of purpose. It is the purpose of this chapter to:

(1) promote the public health, safety, and general welfare by regulating the subdivision of land;

(2) prevent overcrowding of land;

(3) lessen congestion in the streets and highways;

(4) provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements;

(5) require development in harmony with the natural environment;

(6) promote preservation of open space;

(7) promote cluster development approaches that minimize costs to local citizens and that promote effective and efficient provision of public services;

(8) protect the rights of property owners;

(9) require uniform monumentation of land subdivisions and transferring interests in real property by reference to a plat or certificate of survey; and

(10) provide for phased developments.

History: En. Sec. 2, Ch. 500, L. 1973; amd. Sec. 1, Ch. 498, L. 1975; amd. Sec. 1, Ch. 552, L. 1977; R.C.M. 1947, 11-3860; amd. Sec. 1, Ch. 272, L. 1993; amd. Sec. 2, Ch. 468, L. 1995; amd. Sec. 2, Ch. 348, L. 2001; amd. Sec. 1, Ch. 363, L. 2017.

76-3-103. Definitions. As used in this chapter, unless the context or subject matter clearly requires otherwise, the following definitions apply:

(1) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

(2) "Cluster development" means a subdivision with lots clustered in a group of five or more lots that is designed to concentrate building sites on smaller lots in order to reduce capital and maintenance costs for infrastructure through the use of concentrated public services and utilities, while allowing other lands to remain undeveloped.

(3) "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.

(4) "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this chapter. The conveyance of a tract of record or an entire parcel of land that was created by a previous division of land is not a division of land.

(5) "Eligible county water and/or sewer district" means a county water district, a county sewer district, or a county water and sewer district that:

(a) is incorporated under 7-13-2203;

(b) is operated in compliance with Title 75, chapters 5 and 6; and

(c) employs or retains a professional engineer.

(6) "Examining land surveyor" means a registered land surveyor appointed by the governing body to review surveys and plats submitted for filing.

(7) "Final plat" means the final drawing of the subdivision and dedication required by this chapter to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in this chapter and in regulations adopted pursuant to this chapter.

(8) "Governing body" means a board of county commissioners or the governing authority of a city or town organized pursuant to law.

(9) "Homeowners' association" means an association of all the owners of real property within a geographic area defined by physical boundaries that:

(a) is formally governed by a declaration of covenants, bylaws, or both;

(b) may be authorized to impose assessments that, if unpaid, may become a lien on a member's real property; and

(c) may enact or enforce rules concerning the operation of the community or subdivision.

(10) "Immediate family" means a spouse, children by blood or adoption, and parents.

(11) "Minor subdivision" means a subdivision that creates five or fewer lots from a tract of record.

(12) "Phased development" means a subdivision application and preliminary plat that at the time of submission consists of independently platted development phases that are scheduled for review on a schedule proposed by the subdivider.

(13) "Planned unit development" means a land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks that compose a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.

(14) "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.

(15) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a governing body.

(16) "Public utility" has the meaning provided in 69-3-101, except that for the purposes of this chapter, the term includes county or consolidated city and county water or sewer districts as provided for in Title 7, chapter 13, parts 22 and 23, and municipal sewer or water systems and municipal water supply systems established by the governing body of a municipality pursuant to Title 7, chapter 13, parts 42, 43, and 44.

(17) "Subdivider" means a person who causes land to be subdivided or who proposes a subdivision of land.

(18) "Subdivision" means a division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to the parcels may be sold or otherwise transferred and includes any resubdivision and a condominium.

(19) (a) "Tract of record" means an individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office.

(b) Each individual tract of record continues to be an individual parcel of land unless the owner of the parcel has joined it with other contiguous parcels by filing with the county clerk and recorder:

(i) an instrument of conveyance in which the aggregated parcels have been assigned a legal description that describes the resulting single parcel and in which the owner expressly declares the owner's intention that the tracts be merged; or

(ii) a certificate of survey or subdivision plat that shows that the boundaries of the original parcels have been expunged and depicts the boundaries of the larger aggregate parcel.

(c) An instrument of conveyance does not merge parcels of land under subsection (19)(b)(i) unless the instrument states, "This instrument is intended to merge individual parcels of land to form the aggregate parcel(s) described in this instrument" or a similar statement, in addition to the legal description of the aggregate parcels, clearly expressing the owner's intent to effect a merger of parcels.

History: En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1975; R.C.M. 1947, 11-3861(part); amd. Sec. 140, Ch. 370, L. 1987; amd. Sec. 2, Ch. 272, L. 1993; amd. Sec. 1, Ch. 503, L. 1997; amd. Sec. 3, Ch. 348, L. 2001; amd. Sec. 1, Ch. 298, L. 2005; amd. Sec. 10, Ch. 214, L. 2011; amd. Sec. 9, Ch. 379, L. 2013; amd. Sec. 2, Ch. 363, L. 2017; amd. Sec. 2, Ch. 187, L. 2025; amd. Sec. 4, Ch. 486, L. 2025; amd. Sec. 1, Ch. 589, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 2, Ch. 187, L. 2025. Amendment effective April 17, 2025.

See 2025 Session Law for amendment made by sec. 4, Ch. 486, L. 2025. Amendment effective October 1, 2025.

See 2025 Session Law for amendment made by sec. 1, Ch. 589, L. 2025. Amendment effective October 1, 2025.

Applicability — Retroactive Applicability: Section 8, Ch. 187, L. 2025, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to final subdivision plats recorded on or after October 1, 1973."

Section 8, Ch. 589, L. 2025, provided: "[This act] applies to recreational camping vehicles and mobile home spaces created on or after [the effective date of this act]." Effective October 1, 2025.

76-3-104. What constitutes subdivision. A subdivision comprises only those parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section when the parcels have been segregated from the original tract. The subdivision plat must show all the parcels whether contiguous or not.

History: En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1975; R.C.M. 1947, 11-3861(part); amd. Sec. 3, Ch. 272, L. 1993.

76-3-105. Violations. Except as provided in 76-3-207, any person who violates any provision of this chapter or any local regulations adopted pursuant to this chapter shall be guilty of a misdemeanor and punishable by a fine of not less than $100 or more than $500 or by imprisonment in a county jail for not more than 3 months or by both fine and imprisonment. Each sale, lease, or transfer of each separate parcel of land in violation of any provision of this chapter or any local regulation adopted pursuant to this chapter must be deemed a separate and distinct offense.

History: En. Sec. 18, Ch. 500, L. 1973; amd. Sec. 2, Ch. 553, L. 1977; R.C.M. 1947, 11-3876; amd. Sec. 1, Ch. 332, L. 2023.

Part 2
Miscellaneous Exemptions

Part Cross-References

County taxation, Title 7, ch. 6, part 25.
Property tax levies, Title 15, ch. 10.
Unit Ownership Act, Title 70, ch. 23.

76-3-201. Exemption for certain divisions of land — fees for examination of division. (1) Unless the method of disposition is adopted for the purpose of evading this chapter, the requirements of this chapter may not apply to any division of land that:

(a) is created by order of any court of record in this state or by operation of law or that, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain, Title 70, chapter 30;

(b) subject to subsection (4), is created to provide security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes;

(c) creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;

(d) creates cemetery lots;

(e) is created by the reservation of a life estate;

(f) is created by lease or rental for farming and agricultural purposes;

(g) is in a location over which the state does not have jurisdiction; or

(h) is created for rights-of-way or utility sites. A subsequent change in the use of the land to a residential, commercial, or industrial use is subject to the requirements of this chapter.

(2) An exempt division of land as provided in subsection (1)(a) is not considered a subdivision under this chapter if not more than four new lots or parcels are created from the original lot or parcel.

(3) Before a court of record orders a division of land under subsection (1)(a), the court shall notify the governing body of the pending division and allow the governing body to present written comment on the division.

(4) An exemption under subsection (1)(b) applies:

(a) to a division of land of any size;

(b) if the land that is divided is not conveyed to any entity other than the financial or lending institution to which the mortgage, lien, or trust indenture was given or to a purchaser upon foreclosure of the mortgage, lien, or trust indenture. Except as provided in subsection (5), a transfer of the divided land, by the owner of the property at the time that the land was divided, to any party other than those identified in this subsection (4)(b) subjects the division of land to the requirements of this chapter.

(c) to a parcel that is created to provide security as provided in subsection (1)(b). The remainder of the tract of land is subject to the provisions of this chapter, if applicable.

(5) If a parcel of land was divided pursuant to subsection (1)(b) and one of the parcels created by the division was conveyed by the landowner to another party without foreclosure before October 1, 2003, the conveyance of the remaining parcel is not subject to the requirements of this chapter.

(6) The governing body:

(a) may examine a division of land to determine whether or not the requirements of this chapter apply to the division;

(b) may establish reasonable fees, not to exceed $400, for the examination;

(c) shall complete the examination and approve or deny the application for a division of land under this section within 20 working days of the receipt of an application containing all materials and information required by the governing body to complete the examination under regulations adopted pursuant to 76-3-504(1)(p); and

(d) may not impose conditions on the approval of a division of land under this section except for conditions necessary to ensure compliance with the survey requirements of Title 76, chapter 3, part 4.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(9); amd. Sec. 2, Ch. 503, L. 1997; amd. Sec. 1, Ch. 340, L. 2001; amd. Sec. 3, Ch. 549, L. 2003; amd. Sec. 1, Ch. 563, L. 2003; amd. Sec. 1, Ch. 169, L. 2017; amd. Sec. 1, Ch. 358, L. 2021; amd. Sec. 1, Ch. 328, L. 2023; amd. Sec. 1, Ch. 549, L. 2023.

76-3-202. Repealed. Sec. 14, Ch. 379, L. 2013.

History: En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1975; R.C.M. 1947, 11-3861(part); amd. Sec. 10, Ch. 266, L. 1979.

76-3-203. Exemption for certain condominiums and townhouses. (1) Condominiums, townhomes, townhouses, or conversions, as those terms are defined in 70-23-102, constructed on land subdivided in compliance with parts 5 and 6 of this chapter or on lots within incorporated cities and towns are exempt from the provisions of this chapter if:

(a) the approval of the original subdivision of land expressly contemplated the construction of the condominiums, townhomes, or townhouses and any applicable park dedication requirements in 76-3-621 are complied with; or

(b) the condominium, townhome, or townhouse proposal is in conformance with applicable local zoning regulations pertaining to land use, density, bulk and dimensional requirements, landscaping, and parking requirements when local zoning regulations are in effect.

(2) A determination whether the condominium, townhome, townhouse, or conversion proposal is exempt from the provisions of this chapter must be made by the governing body or the agent or agency designated by the governing body within 20 working days of the receipt of an application containing all materials and information required by the governing body to complete the determination.

(3) The governing body may not enact regulations prohibiting the townhome form of ownership or impose conditions on a determination that the condominium, townhome, townhouse, or conversion proposal is exempt from the provisions of this chapter, and may not

require the condominium, townhome, townhouse, or conversion proposal to undergo a conditional use permit or other quasi-judicial governmental review process pursuant to regulations adopted pursuant to Title 76, chapter 2, as a prerequisite to determining eligibility for an exemption from the provisions of this chapter.

History: En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1975; R.C.M. 1947, 11-3861(part); amd. Sec. 1, Ch. 534, L. 2001; amd. Sec. 1, Ch. 229, L. 2007; amd. Sec. 4, Ch. 373, L. 2011; amd. Sec. 7, Ch. 323, L. 2019; amd. Sec. 1, Ch. 448, L. 2023.

76-3-204. Repealed. Sec. 14, Ch. 379, L. 2013.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(10); amd. Sec. 1, Ch. 500, L. 1985.

76-3-205. Exemption for airport land and state-owned lands — exception. (1) A division of land created by lease or rental of contiguous airport-related land owned by a city, a county, the state, or a municipal or regional airport authority is not subject to the requirements of this chapter if the lease or rental is for onsite weather or air navigation facilities, the manufacture, maintenance, and storage of aircraft, or air carrier-related activities.

(2) A division of state-owned land is not subject to the requirements of this chapter unless the division creates a second or subsequent parcel from a single tract for sale, rent, or lease for residential purposes after July 1, 1974.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(5); amd. Sec. 1, Ch. 548, L. 1999.

76-3-206. Exemption for conveyances executed prior to July 1, 1974. This chapter shall not be applicable to deeds, contracts, leases, or other conveyances executed prior to July 1, 1974.

History: En. Sec. 12, Ch. 500, L. 1973; amd. Sec. 8, Ch. 334, L. 1974; R.C.M. 1947, 11-3870(part).

76-3-207. Divisions or aggregations of land exempted from review but subject to survey requirements and zoning regulations — exceptions — fees for examination of division — definitions. (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions or aggregations of tracts of record of any size, regardless of the resulting size of any lot created by the division or aggregation, are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions or aggregations of land other than subdivisions and are subject to applicable zoning regulations adopted under Title 76, chapter 2:

(a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties;

(b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner's immediate family;

(c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which the landowner enters into a covenant for the purposes of this chapter with the governing body that runs with the land and provides that the divided land will be used exclusively for agricultural purposes, subject to the provisions of 76-3-211;

(d) for five or fewer lots within a platted subdivision, the relocation of common boundaries;

(e) divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(f) aggregation of parcels or lots when a certificate of survey or subdivision plat shows that the boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel are established. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(2) Notwithstanding the provisions of subsection (1):

(a) within a platted subdivision filed with the county clerk and recorder, a division, redesign, or rearrangement of lots that results in an increase in the number of lots or that redesigns or rearranges six or more lots must be reviewed and approved by the governing body before an amended plat may be filed with the county clerk and recorder;

(b) (i) a division within a platted subdivision is exempt from additional subdivision reviews and is subject to applicable zoning regulations adopted under Title 76, chapter 2, unless the method of disposition is adopted for the purpose of evading this chapter, if the division:

(A) is within a subdivision that has been approved by a local governing body;

(B) creates lots of a size allowed within the subdivision, whether imposed by the governing body or through a private covenant; and

(C) is gifted or sold to a member of the landowner's immediate family;

(ii) an amended plat must be filed with the county clerk and recorder after a division provided in subsection (2)(b)(i) occurs, and must comply with all standards established pursuant to 76-3-411; and

(iii) except as otherwise provided in this subsection (2)(b), a restriction or requirement on the platted subdivision continues to apply to a division allowed in subsection (2)(b)(i), whether imposed by the governing body or through a private covenant;

(c) a division of land exempted under subsection (1)(b) that is also located in a zoning district is allowed if each family transfer parcel created by the division and any remaining parcel are at least 5 acres, unless the zoning district allows for smaller lot sizes; and

(d) a division of land transferred to an immediate family member pursuant to subsection (1)(b) or (2)(b) may be transferred regardless of age and may be owned jointly with that immediate family member's spouse, but a transfer to a minor must comply with Title 72, chapter 26, part 6.

(3) (a) Subject to subsection (3)(b), a division of land may not be made under this section unless the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid.

(b) (i) If a division of land includes centrally assessed property and the property taxes applicable to the division of land are not specifically identified in the tax assessment, the department of revenue shall prorate the taxes applicable to the land being divided on a reasonable basis. The owner of the centrally assessed property shall ensure that the prorated real property taxes and special assessments are paid on the land being sold before the division of land is made.

(ii) The county treasurer may accept the amount of the tax prorated pursuant to this subsection (3)(b) as a partial payment of the total tax that is due.

(4) The governing body:

(a) shall examine a division or aggregation of land to determine whether or not the requirements of this chapter apply to the division or aggregation;

(b) may establish reasonable fees, not to exceed $400, for the examination;

(c) shall complete the examination and approve or deny the application for a division or aggregation of land under this section within 20 working days of the receipt of an application containing all materials and information required by the governing body to conduct its review under regulations adopted pursuant to 76-3-504(1)(p) and subsection (5); and

(d) may not impose conditions on the approval of a division or aggregation of land under this section except for conditions necessary to ensure compliance with the survey requirements of Title 76, chapter 3, part 4.

(5) The attorney general shall prepare a form affidavit to be used by a governing body to conduct the examination required by this section. The application used by the governing body under subsection (4) must be accompanied by an affidavit from the applicant setting forth the applicant's intentions, including that the proposed use of an exemption is not for the purpose of evading this chapter. A governing body may not force an applicant to appear before the governing body during the examination period.

(6) (a) An immediate family member or the spouse of an immediate family member who receives a division of land pursuant to subsection (1)(b) or (2)(b) may not transfer or otherwise convey the division of land for a period of up to 2 years after the date of the division unless the governing body sets a period of less than 2 years.

(b) This subsection (6) does not preclude the recipient of a division of land pursuant to subsection (1)(b) or (2)(b) from conveying an interest in the land under a mortgage or trust indenture for the purpose of securing an obligation owed to another person or entity.

(c) The restriction in subsection (6)(a) does not apply to a transfer or conveyance of the land pursuant to a foreclosure sale or by deed in lieu of foreclosure. The restriction on transferring

the land under subsection (6)(a) does not apply to a person or entity who acquires title to the division of land by purchase at a foreclosure sale or by deed in lieu of foreclosure. A person or entity who acquires title to the land by purchase at a foreclosure sale or by deed in lieu of foreclosure may freely transfer or convey the land.

(d) A governing body may authorize variances from these requirements to address hardship situations.

(7) (a) If, after initial approval, a governing body can prove by documented evidence in a court of competent jurisdiction that a person has knowingly evaded this chapter through the use of a division of land pursuant to subsection (1)(b) or (2)(b), the exclusive remedy available to the governing body is for the person to be subject to a civil penalty of $10,000 or an amount equal to 10% of the sales price if the division of land has been sold to a third party, whichever is greater, for each division of land, payable to the governing body.

(b) The governing body may not:

(i) impose a civil liability on the person or entity to whom the division of land or security interest in the land was conveyed pursuant to subsection (6)(b) or (6)(c);

(ii) impair or affect the validity or priority of a security interest in the division of land conveyed pursuant to subsection (6)(b); or

(iii) prohibit or impair the use of, the conveyance of an interest in, or the transfer of a division of land by a person or entity who acquires the division of land pursuant to subsection (6)(c).

(8) For the purposes of this section, the following definitions apply:

(a) (i) "Documented evidence" means written documents, photographs, video, microfilm, digital data, or affidavits.

(ii) The term does not include general observations, opinions, or oral statements unless they are made by the applicant.

(b) "Jointly" means as joint tenants or tenants in common.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(6); amd. Sec. 1, Ch. 379, L. 1985; amd. Sec. 1, Ch. 569, L. 1989; amd. Sec. 4, Ch. 272, L. 1993; amd. Sec. 3, Ch. 366, L. 1993; amd. Sec. 3, Ch. 468, L. 1995; amd. Sec. 2, Ch. 436, L. 2003; amd. Sec. 2, Ch. 563, L. 2003; amd. Sec. 1, Ch. 252, L. 2005; amd. Sec. 12, Ch. 446, L. 2009; amd. Sec. 1, Ch. 351, L. 2013; amd. Sec. 2, Ch. 34, L. 2019; amd. Sec. 2, Ch. 328, L. 2023; amd. Sec. 2, Ch. 332, L. 2023; amd. Sec. 2, Ch. 549, L. 2023; amd. Sec. 1, Ch. 314, L. 2025; amd. Sec. 1, Ch. 511, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 1, Ch. 314, L. 2025. Amendment effective October 1, 2025.

See 2025 Session Law for amendment made by sec. 1, Ch. 511, L. 2025. Amendment effective May 8, 2025.

76-3-208. Repealed. Sec. 14, Ch. 379, L. 2013.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(7).

76-3-209. Exemption from surveying and platting requirements for lands acquired for state highways. Instruments of transfer of land which is acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with 60-2-209 and are exempted from the surveying and platting requirements of this chapter. If such parcels are not shown on highway plans of record, instruments of transfer of such parcels shall be accompanied by and refer to appropriate certificates of survey and plats when presented for recording.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(4).

76-3-210. Repealed. Sec. 23, Ch. 446, L. 2009.

History: (1)En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; Sec. 11-3862, R.C.M. 1947; (2)En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; Sec. 11-3863, R.C.M. 1947; R.C.M. 1947, 11-3862(8), 11-3863(3.1); amd. Sec. 20, Ch. 582, L. 1999; amd. Sec. 10, Ch. 599, L. 2003.

76-3-211. Agricultural covenant — change in use. (1) A change in use for anything other than agricultural purposes subjects a division of land that received an exemption under 76-3-207(1)(c) to subdivision review under parts 5 and 6 of this chapter. However, the governing body, in its discretion, may revoke the covenant provided for in 76-3-207(1)(c) for the purposes of this chapter and the division may proceed without subdivision review if:

(a) the original lot lines are restored through aggregation of the covenanted land prior to or in conjunction with the revoking of the covenant;

(b) a government or public entity seeks to use the land for public purposes as defined in the governing body's review criteria pursuant to 76-3-504(1)(p); or

(c) the land is annexed into a municipality.

(2) If a governing body proposes to revoke a covenant pursuant to subsection (1)(b), the governing body shall hold a public hearing. Within 15 days of the hearing, the governing body shall issue written findings of fact and a decision based on the record. If the governing body approves the revoking of the covenant, the approval must be recorded with the clerk and recorder.

(3) The revocation of a covenant pursuant to this section does not affect sanitary restrictions imposed under Title 76, chapter 4.

History: En. Sec. 1, Ch. 34, L. 2019; amd. Sec. 1, Ch. 213, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 213, L. 2025. Amendment effective October 1, 2025.

Part 3
Land Transfers

Part Cross-References

County taxation, Title 7, ch. 6, part 25.
Property tax levies, Title 15, ch. 10.

76-3-301. General restriction on transfer of title to subdivided lands. (1) Except as provided in 76-3-303, every final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner. The clerk and recorder of the county shall refuse to accept any plat for record that fails to have the approval of 76-3-611(1) in proper form unless the plat is located in an area over which the state does not have jurisdiction.

(2) The clerk and recorder shall notify the governing body or its designated agent of any land division described in 76-3-207(1).

(3) If transfers not in accordance with this chapter are made, the county attorney shall commence action to enjoin further sales or transfers and compel compliance with all provisions of this chapter. The cost of the action must be imposed against the party not prevailing.

History: En. Sec. 9, Ch. 500, L. 1973; amd. Sec. 7, Ch. 334, L. 1974; amd. Sec. 1, Ch. 553, L. 1977; R.C.M. 1947, 11-3867(part); amd. Sec. 1, Ch. 633, L. 1979; amd. Sec. 2, Ch. 340, L. 2001.

76-3-302. Restrictions on recording instruments relating to land subject to surveying requirements. (1) Except as provided in subsection (2), the county clerk and recorder of any county may not record any instrument that purports to transfer title to or possession of a parcel or tract of land that is required to be surveyed by this chapter unless the required certificate of survey or subdivision plat has been filed with the clerk and recorder and the instrument of transfer describes the parcel or tract by reference to the filed certificate or plat.

(2) Subsection (1) does not apply when the parcel or tract to be transferred:

(a) is in a location in which the state does not have jurisdiction; or

(b) was created before July 1, 1973, and the instrument of transfer for the parcel or tract includes a reference to a previously recorded instrument of transfer or is accompanied by documents that, if recorded, would otherwise satisfy the requirements of this subsection. The reference or document must demonstrate that the parcel or tract existed before July 1, 1973.

(3) The reference or documents required in subsection (2) do not constitute a legal description of the property and may not be substituted for a legal description of the property.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(3); amd. Sec. 1, Ch. 268, L. 1987; amd. Sec. 3, Ch. 340, L. 2001.

76-3-303. Contract for deed permitted if buyer protected. Notwithstanding the provisions of 76-3-301, after the preliminary plat of a subdivision has been approved or conditionally approved, the subdivider may enter into contracts to sell lots in the proposed subdivision if all of the following conditions are met:

(1) under the terms of the contracts, the purchasers of lots in the proposed subdivision make any payments to an escrow agent, which must be a bank or savings and loan association chartered to do business in the state of Montana;

(2) under the terms of the contracts and the escrow agreement, the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the county clerk and recorder;

(3) the contracts and the escrow agreement provide that if the final plat of the proposed subdivision is not filed with the county clerk and recorder within 2 years of the preliminary plat approval, the escrow agent shall immediately refund to each purchaser any payments the purchaser has made under the contract;

(4) the county treasurer has certified that no real property taxes assessed and levied on the land to be divided are delinquent; and

(5) the contracts contain the following language conspicuously set out: "The real property that is the subject of this contract has not been finally platted, and until a final plat identifying the property has been filed with the county clerk and recorder, title to the property may not be transferred in any manner."

History: En. Sec. 9, Ch. 500, L. 1973; amd. Sec. 7, Ch. 334, L. 1974; amd. Sec. 1, Ch. 553, L. 1977; R.C.M. 1947, 11-3867(4); amd. Sec. 2, Ch. 379, L. 1985; amd. Sec. 2518, Ch. 56, L. 2009.

76-3-304. Effect of recording complying plat. The recording of any plat made in compliance with the provisions of this chapter shall serve to establish the identity of all lands shown on and being a part of such plat. Where lands are conveyed by reference to a plat, the plat itself or any copy of the plat properly certified by the county clerk and recorder as being a true copy thereof shall be regarded as incorporated into the instrument of conveyance and shall be received in evidence in all courts of this state.

History: En. Sec. 12, Ch. 500, L. 1973; amd. Sec. 8, Ch. 334, L. 1974; R.C.M. 1947, 11-3870(3).

76-3-305. Vacation of plats — utility easements. (1) Any plat prepared and recorded as provided in this part may be vacated either in whole or in part as provided by 7-5-2501, 7-5-2502, 7-14-2616(1) and (2), 7-14-2617, 7-14-4114(1) and (2), and 7-14-4115. Upon vacation, the governing body or the district court, as provided in 7-5-2502, shall determine to which properties the title to the streets and alleys of the vacated portions must revert. The governing body or the district court, as provided in 7-5-2502, shall take into consideration the previous platting; the manner in which the right-of-way was originally dedicated, granted, or conveyed; the reasons stated in the petition requesting the vacation; the parties requesting the vacation; and any agreements between the adjacent property owners regarding the use of the vacated area. The title to the streets and alleys of the vacated portions may revert to one or more of the owners of the properties within the platted area adjacent to the vacated portions.

(2) However, when any poleline, pipeline, or any other public or private facility is located in a vacated street or alley at the time of the reversion of the title to the vacated street or alley, the owner of the public or private utility facility has an easement over the vacated land to continue the operation and maintenance of the public utility facility.

History: En. Sec. 12, Ch. 500, L. 1973; amd. Sec. 8, Ch. 334, L. 1974; R.C.M. 1947, 11-3870(1); amd. Sec. 1, Ch. 100, L. 1995; amd. Sec. 277, Ch. 42, L. 1997.

76-3-306. Covenants run with the land. All covenants shall be considered to run with the land, whether marked or noted on the subdivision plat or contained in a separate instrument recorded with the plat.

History: En. Sec. 11, Ch. 500, L. 1973; R.C.M. 1947, 11-3869.

Cross-References

Covenants running with land, Title 70, ch. 17, part 2.

76-3-307. Donations or grants to public considered a grant to donee. Every donation or grant to the public or to any person, society, or corporation marked or noted on a plat is to be considered a grant to the donee.

History: En. Sec. 13, Ch. 500, L. 1973; R.C.M. 1947, 11-3871.

76-3-308. Transfer of title of open spaces in recorded final plat. (1) After a final subdivision plat has been filed for record with the county clerk and recorder, a homeowners' association may file a petition with the governing body to transfer title to the homeowners'

association of any open spaces, parks, or similar common-use areas set aside in the final plat if the following conditions are met:

(a) the homeowners' association is organized in accordance with the covenants;

(b) the covenants require the homeowners' association to maintain, repair, or insure the open spaces, parks, or similar common-use areas;

(c) the governing body finds that it was the intent of the subdivider that the open spaces, parks, or similar common-use areas be owned by the homeowners' association; and

(d) the property to be transferred is not owned by a person.

(2) The petition under subsection (1) must be signed by an authorized representative of the homeowners' association.

(3) After a public hearing on the petition, the governing body shall issue written findings of fact and a decision based on the record. If the requirements of subsection (1) have been met, the governing body shall approve the transfer. If the governing body approves the transfer, the approval must be recorded with the clerk and recorder.

History: En. Sec. 1, Ch. 187, L. 2025.

Compiler's Comments

Effective Date: Section 7, Ch. 187, L. 2025, provided: "[This act] is effective on passage and approval." Approved April 17, 2025.

Retroactive Applicability: Section 8, Ch. 187, L. 2025, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to final subdivision plats recorded on or after October 1, 1973."

Part 4
Survey Requirements

Part Cross-References

Board of Professional Engineers and Professional Land Surveyors — licensing, Title 37, ch. 67.

76-3-401. Survey requirements for lands other than subdivisions. All divisions of land for sale other than a subdivision after July 1, 1974, into parcels which cannot be described as 1/32 or larger aliquot parts of a United States government section or a United States government lot must be surveyed by or under the supervision of a registered land surveyor. Surveys required under this section must comply with the requirements of 76-3-406.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(1); amd. Sec. 2, Ch. 136, L. 1993.

76-3-402. Survey and platting requirements for subdivided lands. (1) Every subdivision of land after June 30, 1973, must be surveyed and platted in conformance with this chapter, including the requirements of 76-3-406, by or under the supervision of a registered land surveyor.

(2) Subdivision plats must be prepared and filed in accordance with this chapter and regulations adopted pursuant to this chapter.

(3) All division of sections into aliquot parts and retracement of lines must conform to United States bureau of land management instructions, and all public land survey corners must be filed in accordance with Corner Recordation Act of Montana (Title 70, chapter 22, part 1). Engineering plans, specifications, and reports required in connection with public improvements and other elements of the subdivision required by the governing body must be prepared and filed by a registered engineer or a registered land surveyor, as their respective licensing laws allow, in accordance with this chapter and regulations adopted pursuant to this chapter.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(2); amd. Sec. 3, Ch. 136, L. 1993.

76-3-403. Monumentation. (1) The board of professional engineers and professional land surveyors shall, in conformance with the Montana Administrative Procedure Act, prescribe uniform standards for monumentation and for the form, accuracy, and descriptive content of records of survey.

(2) It is the responsibility of the governing body to require the replacement of all monuments removed in the course of construction.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(11), (12); amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 211, Ch. 483, L. 2001; amd. Sec. 6, Ch. 190, L. 2003.

Cross-References
Montana Administrative Procedure Act, Title 2, ch. 4.

76-3-404. Certificate of survey. (1) Except as provided in 70-22-105, within 180 days of the completion of a survey, the registered land surveyor responsible for the survey, whether the surveyor is privately or publicly employed, shall prepare and submit for filing a certificate of survey in the county in which the survey was made if the survey:

(a) provides material evidence not appearing on any map filed with the county clerk and recorder or contained in the records of the United States bureau of land management;

(b) reveals a material discrepancy in the map;

(c) discloses evidence to suggest alternate locations of lines or points; or

(d) establishes one or more lines not shown on a recorded map, the positions of which are not ascertainable from an inspection of the map without trigonometric calculations.

(2) A certificate of survey is not required for any survey that is made by the United States bureau of land management, that is preliminary, or that will become part of a subdivision plat being prepared for recording under the provisions of this chapter.

(3) Certificates of survey must be legibly drawn, printed, or reproduced by a process guaranteeing a permanent record and must conform to monumentation and surveying requirements promulgated under this chapter.

History: En. Sec. 14, Ch. 500, L. 1973; R.C.M. 1947, 11-3872; amd. Sec. 2, Ch. 633, L. 1979; amd. Sec. 4, Ch. 549, L. 2003.

76-3-405. Administration of oaths by registered land surveyor. (1) A registered land surveyor may administer and certify oaths when:

(a) it becomes necessary to take testimony for the identification of old corners or reestablishment of lost or obliterated corners;

(b) a corner or monument is found in a deteriorating condition and it is desirable that evidence concerning it be perpetuated;

(c) the importance of the survey makes it desirable to administer an oath to the surveyor's assistants for the faithful performance of their duty.

(2) A record of oaths must be preserved as part of the field notes of the survey and noted on the certificate of survey filed under 76-3-404.

History: En. Sec. 17, Ch. 500, L. 1973; R.C.M. 1947, 11-3875; amd. Sec. 11, Ch. 266, L. 1979; amd. Sec. 2519, Ch. 56, L. 2009.

76-3-406. Surveys affecting irrigation districts — additional survey requirements. (1) (a) A surveyor who completes a survey identified in subsection (2) that establishes or defines a section line and creates a parcel that crosses the established or defined section line so that an irrigation district assessment boundary is included in more than 1 section shall note on the survey the acreage of the farm unit or created parcel in each section.

(b) The surveyor shall notify the appropriate irrigation district of the existence of the survey and the purpose of the survey.

(2) The requirements of subsection (1) apply only to surveys for which the surveyor determines that, based on available public records, the survey involves land:

(a) traversed by a canal or ditch owned by an irrigation district; or

(b) included in an irrigation district.

(3) For purposes of this section, "irrigation district" means a district established pursuant to Title 85, chapter 7.

History: En. Sec. 1, Ch. 136, L. 1993.

76-3-407 through 76-3-410 reserved.

76-3-411. Board to prescribe standards. The board of professional engineers and professional land surveyors shall, in conformance with the Montana Administrative Procedure Act, prescribe uniform standards governing certificates of survey and final subdivision plats.

History: En. Sec. 1, Ch. 258, L. 2009.

Cross-References
Board of professional engineers and professional land surveyors, 2-15-1763.

Part 5
Local Regulations

76-3-501. Local subdivision regulations. (1) The governing body of every county, city, and town shall adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for:

(a) the orderly development of their jurisdictional areas;

(b) the coordination of roads within subdivided land with other roads, both existing and planned;

(c) the dedication of land for roadways and for public utility easements;

(d) the improvement of roads;

(e) the provision of adequate open spaces for travel, light, air, and recreation;

(f) the provision of adequate transportation, water, and drainage;

(g) subject to the provisions of 76-3-511, the regulation of sanitary facilities;

(h) the avoidance or minimization of congestion; and

(i) the avoidance of subdivisions that would involve unnecessary environmental degradation and danger of injury to health, safety, or welfare by reason of natural hazard, including but not limited to fire and wildland fire, or the lack of water, drainage, access, transportation, or other public services or that would necessitate an excessive expenditure of public funds for the supply of the services.

(2) Any action that is not specifically prohibited in the conditions of subdivision approval is specifically allowed or is otherwise subject to additional restrictions that may be provided in the governing documents of the subdivision and applicable zoning regulations.

(3) If a local government has historically interpreted and enforced or chosen not to enforce a condition of subdivision approval to the benefit of a parcel owner, the local government may not undertake a different interpretation or enforcement action against a similarly situated parcel owner in the same subdivision.

(4) A review and decision made by a governing body under the authority of this chapter:

(a) relates specifically and only to the criteria for review and authority provided in this chapter; and

(b) is not constrained, influenced, or restricted by a decision made by a state agency or entity acting under other lawful authority.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(part); amd. Sec. 1, Ch. 378, L. 1985; amd. Sec. 17, Ch. 471, L. 1995; amd. Sec. 2, Ch. 298, L. 2005; amd. Sec. 2, Ch. 443, L. 2007; amd. Sec. 1, Ch. 319, L. 2021; amd. Sec. 1, Ch. 708, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 708, L. 2025. Amendment effective January 1, 2026.

Applicability: Section 9, Ch. 708, L. 2025, provided: "[This act] applies to subdivisions that are reviewed pursuant to Title 76, chapter 3, on or after [the effective date of this act]." Effective January 1, 2026.

76-3-502. Repealed. Sec. 4, Ch. 236, L. 1981.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(part); amd. Sec. 6, Ch. 274, L. 1981.

76-3-503. Hearing on proposed regulations. Before the governing body adopts subdivision regulations pursuant to 76-3-501 or 76-3-509, it shall hold a public hearing on the regulations and shall give public notice of its intent to adopt the regulations and of the public hearing by publication of notice of the time and place of the hearing as provided in 7-1-2121 if the governing body is a county commission or as provided in 7-1-4127 for a time period in accordance with 7-1-4127(7)(b) if the governing body is a city commission or a town council.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(part); amd. Sec. 4, Ch. 348, L. 2001; amd. Sec. 11, Ch. 272, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 11, Ch. 272, L. 2025. Amendment effective October 1, 2025.

76-3-504. Subdivision regulations — contents. (1) The subdivision regulations adopted under this chapter must comply with the requirements provided for in 76-3-501 and, at a minimum:

(a) list the materials that must be included in a subdivision application in order for the application to be determined to contain the required elements for the purposes of the review required in 76-3-604(1);

(b) except as provided in 76-3-509, 76-3-609, or 76-3-616, require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(c) establish procedures consistent with this chapter for the submission and review of subdivision applications and amended applications;

(d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(e) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development. The regulations must prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques or other mitigation measures authorized under 76-3-608(4) and (5). Approved construction techniques or other mitigation measures may not include building regulations as defined in 50-60-101 other than those identified by the department of labor and industry as provided in 50-60-901.

(f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(g) prescribe standards for:

(i) the design and arrangement of lots, streets, and roads;

(ii) grading and drainage;

(iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that meet the:

(A) regulations adopted by the department of environmental quality under 76-4-104 for subdivisions that will create one or more parcels containing less than 20 acres; and

(B) standards provided in 76-3-604 and 76-3-622 for subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres; and

(iv) the location and installation of public utilities;

(h) provide procedures for the administration of the park and open-space requirements of this chapter;

(i) provide for the review of subdivision applications by affected public utilities and those agencies of local, state, and federal government identified during the preapplication consultation conducted pursuant to subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency review may not delay the governing body's action on the application beyond the time limits specified in this chapter, and the failure of any agency to complete a review of an application may not be a basis for rejection of the application by the governing body.

(j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider to:

(i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;

(ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

(iii) reserve and sever all surface water rights from the land;

(k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements in the subdivision that:

(A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under

an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;

(B) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and

(C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.

(ii) Establishment of easements pursuant to this subsection (1)(k) is not required if:

(A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

(B) the water rights are removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

(l) require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights;

(m) require the subdivider to describe, dimension, and show public utility easements in the subdivision on the final plat in their true and correct location. The public utility easements must be of sufficient width to allow the physical placement and unobstructed maintenance of public utility facilities for the provision of public utility services within the subdivision.

(n) establish whether the governing body, its authorized agent or agency, or both will hold public hearings;

(o) establish procedures describing how the governing body or its agent or agency will address information presented at the hearing or hearings held pursuant to 76-3-605 and 76-3-615;

(p) establish criteria that the governing body or reviewing authority will use to determine whether a proposed method of disposition using the exemptions provided in 76-3-201 or 76-3-207 is an attempt to evade the requirements of this chapter. The regulations must provide for an appeals process to the governing body if the reviewing authority is not the governing body.

(q) establish a preapplication process that:

(i) requires a subdivider to meet with the authorized agent or agency, other than the governing body, that is designated by the governing body to review subdivision applications prior to the subdivider submitting the application;

(ii) requires, for informational purposes only, identification of the state laws, local regulations, and growth policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;

(iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local, state, and federal government, and any other entities that may be contacted for comment on the subdivision application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during the review of the application, the agent or agency designated by the governing body contacts a public utility, agency, or other entity that was not included on the list originally made available to the subdivider, the agent or agency shall notify the subdivider of the contact and the timeframe for response.

(iv) requires that a preapplication meeting take place no more than 30 days from the date that the authorized agent or agency receives a written request for a preapplication meeting from the subdivider; and

(v) establishes a time limit after a preapplication meeting by which an application must be submitted;

(r) require that the written decision required by 76-3-620 must be provided to the applicant within 30 working days following a decision by the governing body to approve, conditionally approve, or deny a subdivision.

(2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted under 76-3-509 and this section may include provisions that are consistent with this section that promote cluster development.

History: **En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(2), (3); amd. Sec. 1, Ch. 236, L. 1981; amd. Sec. 17, Ch. 274, L. 1981; amd. Sec. 238, Ch. 418, L. 1995; amd. Sec. 18, Ch. 471, L. 1995; amd. Sec. 1, Ch. 201, L. 1999; amd. Sec. 21, Ch. 582, L. 1999; amd. Sec. 5, Ch. 348, L. 2001; amd. Sec. 3, Ch. 527, L. 2001; amd. Sec. 1, Ch. 564, L. 2001; amd. Sec. 11, Ch. 599, L. 2003; amd. Sec. 3, Ch. 298, L. 2005; amd. Sec. 1, Ch. 302, L. 2005; amd. Sec. 1, Ch. 317, L. 2007; amd. Sec. 3, Ch. 443, L. 2007; amd. Sec. 13, Ch. 446, L. 2009; amd. Sec. 1, Ch. 109, L. 2013; amd. Sec. 10, Ch. 379, L. 2013; amd. Sec. 2, Ch. 319, L. 2021; amd. Sec. 2, Ch. 589, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 589, L. 2025. Amendment effective October 1, 2025.

Applicability: Section 8, Ch. 589, L. 2025, provided: "[This act] applies to recreational camping vehicles and mobile home spaces created on or after [the effective date of this act]." Effective October 1, 2025.

76-3-505. Repealed. Sec. 16, Ch. 298, L. 2005.

History: **En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(5); amd. Sec. 1, Ch. 579, L. 1985; amd. Sec. 1, Ch. 256, L. 1987; amd. Sec. 239, Ch. 418, L. 1995; amd. Sec. 22, Ch. 582, L. 1999; amd. Sec. 12, Ch. 599, L. 2003.**

76-3-506. Provision for granting variances. (1) Subdivision regulations may authorize the governing body, after a public hearing on the variance request before the governing body or its designated agent or agency, to grant variances from the regulations when strict compliance will result in undue hardship and when it is not essential to the public welfare.

(2) Any variance granted pursuant to this section must be based on specific variance criteria contained in the subdivision regulations.

(3) A minor subdivision as provided for in 76-3-609(2) is not subject to the public hearing requirement of this section.

History: **En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(6); amd. Sec. 14, Ch. 446, L. 2009.**

76-3-507. Provision for security requirements to ensure construction of public improvements. (1) Except as provided in subsections (2) and (4), the governing body shall require the subdivider to complete required improvements within the proposed subdivision prior to the approval of the final plat.

(2) (a) In lieu of the completion of the construction of any public improvements prior to the approval of a final plat, the governing body shall at the subdivider's option allow the subdivider to provide or cause to be provided a bond or other reasonable security, in an amount and with surety and conditions satisfactory to the governing body, providing for and securing the construction and installation of the improvements within a period specified by the governing body and expressed in the bonds or other security. The governing body shall reduce bond or security requirements commensurate with the completion of improvements.

(b) In lieu of requiring a bond or other means of security for the construction or installation of all the required public improvements under subsection (2)(a), the governing body may approve an incremental payment or guarantee plan. The improvements in a prior increment must be completed or the payment or guarantee of payment for the costs of the improvements incurred in a prior increment must be satisfied before development of future increments.

(3) Approval by the governing body of a final plat prior to the completion of required improvements and without the provision of the security required under subsection (2) is not an act of a legislative body for the purposes of 2-9-111.

(4) The governing body may require a percentage of improvements or specific types of improvements necessary to protect public health and safety to be completed before allowing bonding or other reasonable security under subsection (2)(a) for purposes of filing a final plat. The requirement is applicable to approved preliminary plats.

(5) If capacity for the subdivision was approved under a development plan as provided for in 75-6-130, the governing body shall require the subdivider to complete the water and sewer improvements within and to the proposed subdivision prior to the approval of the final plat. The

subdivider shall provide a letter from the department that states that certification and as-builts for the subdivision have been received and that the municipality or eligible county water and/or sewer district is in compliance with the applicable development plan.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(7); amd. Sec. 4, Ch. 468, L. 1995; amd. Sec. 3, Ch. 503, L. 1997; amd. Sec. 15, Ch. 446, L. 2009; amd. Sec. 5, Ch. 353, L. 2023; amd. Sec. 5, Ch. 486, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 5, Ch. 486, L. 2025. Amendment effective October 1, 2025.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

76-3-508. Repealed. Sec. 4, Ch. 236, L. 1981.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(8).

76-3-509. Local option cluster development regulations and exemptions authorized. (1) If the governing body has adopted a growth policy that meets the requirements of 76-1-601, the governing body may adopt regulations to promote cluster development and preserve open space under this section.

(2) Regulations adopted under this section must:

(a) establish a maximum size for each parcel in a cluster development;

(b) subject to subsection (3)(d), establish a maximum number of parcels in a cluster development; and

(c) establish requirements, including a minimum size for the area to be preserved, for preservation of open space as a condition of approval of a cluster development subdivision under regulations adopted pursuant to this section. Land protected as open space on a long-term basis must be identified on the final subdivision plat, and the plat must include a copy of or a recording reference to the irrevocable covenant prohibiting further subdivision, division, or development of the open space lots or parcels, as provided in Title 70, chapter 17, part 2.

(3) Regulations adopted under this section may:

(a) establish a shorter timeframe for review of proposed cluster developments;

(b) establish procedures and requirements that provide an incentive for cluster development subdivisions that are consistent with the provisions of this chapter;

(c) authorize the review of a division of land that involves more than one existing parcel as one subdivision proposal for the purposes of creating a cluster development;

(d) authorize the creation of one clustered parcel for each existing parcel that is reviewed as provided in subsection (3)(c); and

(e) establish exemptions from the following:

(i) the requirements of an environmental assessment pursuant to 76-3-603;

(ii) review of the criteria in 76-3-608(3)(a); and

(iii) park dedication requirements pursuant to 76-3-621.

(4) Except as provided in this section, the provisions of this chapter apply to cluster development subdivisions.

History: En. Sec. 6, Ch. 348, L. 2001; amd. Sec. 2, Ch. 137, L. 2011.

76-3-510. Payment for extension of capital facilities. (1) A local government may require a subdivider to pay or guarantee payment for part or all of the costs of extending capital facilities related to public health and safety, including but not limited to public roads, sewer lines, water supply lines, and storm drains to a subdivision. The costs must reasonably reflect the expected impacts directly attributable to the subdivision. A local government may not require a subdivider to pay or guarantee payment for part or all of the costs of constructing or extending capital facilities related to education.

(2) All fees, costs, or other money paid by a subdivider under this section must be expended on the capital facilities for which the payments were required.

History: En. Sec. 8, Ch. 468, L. 1995; amd. Sec. 1, Ch. 405, L. 2009; amd. Sec. 16, Ch. 446, L. 2009.

76-3-511. Local regulations no more stringent than state regulations or guidelines. (1) Except as provided in subsections (2) through (4) or unless required by state law, a governing body may not adopt a regulation under 76-3-501 or 76-3-504(1)(g)(iii) that is more stringent

than the comparable state regulations or guidelines that address the same circumstances. The governing body may incorporate by reference comparable state regulations or guidelines.

(2) The governing body may adopt a regulation to implement 76-3-501 or 76-3-504(1)(g)(iii) that is more stringent than comparable state regulations or guidelines only if the governing body makes a written finding, after a public hearing and public comment and based on evidence in the record, that:

(a) the proposed local standard or requirement protects public health or the environment; and

(b) the local standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the governing body's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(4) (a) A person affected by a regulation of the governing body adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable state regulations or guidelines may petition the governing body to review the regulation. If the governing body determines that the regulation is more stringent than comparable state regulations or guidelines, the governing body shall comply with this section by either revising the regulation to conform to the state regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged regulation. The governing body may charge a petition filing fee in an amount not to exceed $250.

(b) A person may also petition the governing body for a regulation review under subsection (4)(a) if the governing body adopts a regulation after January 1, 1990, in an area in which no state regulations or guidelines existed and the state government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted governing body regulation.

History: En. Sec. 5, Ch. 471, L. 1995; amd. Sec. 278, Ch. 42, L. 1997; amd. Sec. 2, Ch. 302, L. 2005; amd. Sec. 107, Ch. 2, L. 2009.

76-3-512. Residential development infrastructure — rulemaking. (1) If a local government requires a residential development subdivider to pay or guarantee payment for part or all of the costs of extending or enhancing capital facilities pursuant to 76-3-510, the local government may enact a rule or regulation that provides for an equal share of the costs associated with extending or enhancing those capital facilities when a subsequent development also benefits from the expansion or enhancement of those capital facilities.

(2) The department of transportation may establish rules that locally approved and platted residential developments may be allocated a future cost share of present-day intersection or other improvements to reduce the undue hardship and associated cost barriers for residential developments to move forward. This analysis should also recognize normal increases in traffic impacts beyond that which is or can be attributable to one or more developments.

History: En. Sec. 1, Ch. 625, L. 2025.

Compiler's Comments

Effective Date: Section 18, Ch. 625, L. 2025, provided: "[This act] is effective on passage and approval." Approved May 13, 2025.

76-3-513 reserved.

76-3-514. Housing fees and dedication of real property prohibited. (1) A local governing body may not require, as a condition for approval of a subdivision under this part:

(a) the payment of a fee for the purpose of providing housing for specified income levels or at specified sale prices; or

(b) the dedication of real property for the purpose of providing housing for specified income levels or at specified sale prices.

(2) A dedication of real property as prohibited in subsection (1)(b) includes a payment or other contribution to a local housing authority or the reservation of real property for future development of housing for specified income levels or specified sale prices.

History: En. Sec. 2, Ch. 249, L. 2021.

Cross-References
Imposition of fee or dedication on owner of addition prohibited, 7-2-4203.
Imposition of fee or dedication by local governing body resolution prohibited, 76-2-114.
Imposition of fee or dedication in zoning regulations prohibited, 76-2-203.
Imposition of fee or dedication in zoning regulations prohibited, 76-2-302.

Part 6
Local Review Procedure

76-3-601. Submission of application and preliminary plat for review — water and sanitation information required. (1) The subdivider shall present to the governing body or to the agent or agency designated by the governing body the subdivision application, including the preliminary plat of the proposed subdivision, for local review. The preliminary plat must show all pertinent features of the proposed subdivision and all proposed improvements and must be accompanied by the preliminary water and sanitation information required under 76-3-622.

(2) (a) When the proposed subdivision lies within the boundaries of an incorporated city or town, the application and preliminary plat must be submitted to and approved by the city or town governing body.

(b) When the proposed subdivision is situated entirely in an unincorporated area, the application and preliminary plat must be submitted to and approved by the governing body of the county. However, if the proposed subdivision lies within 1 mile of a third-class city or town, within 2 miles of a second-class city, or within 3 miles of a first-class city, the county governing body shall submit the application and preliminary plat to the city or town governing body or its designated agent for review and comment. If the proposed subdivision is situated within a rural school district, as described in 20-9-615, the county governing body shall provide a summary of the information contained in the application and preliminary plat to school district trustees.

(c) If the proposed subdivision lies partly within an incorporated city or town, the application and preliminary plat must be submitted to and approved by both the city or town and the county governing bodies.

(d) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall coordinate the subdivision review and annexation procedures to minimize duplication of hearings, reports, and other requirements whenever possible.

(3) The provisions of 76-3-604, 76-3-605, 76-3-608 through 76-3-610, and this section do not limit the authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to 7-3-4444.

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part); amd. Sec. 1, Ch. 89, L. 1981; amd. Sec. 4, Ch. 506, L. 1995; amd. Sec. 23, Ch. 582, L. 1999; amd. Sec. 67, Ch. 7, L. 2001; amd. Sec. 4, Ch. 298, L. 2005; amd. Sec. 3, Ch. 302, L. 2005; amd. Sec. 2, Ch. 109, L. 2013.

76-3-602. Fees. The governing body may establish reasonable fees to be paid by the subdivider to defray the expense of reviewing subdivision applications.

History: En. Sec. 10, Ch. 500, L. 1973; R.C.M. 1947, 11-3868; amd. Sec. 5, Ch. 298, L. 2005.

76-3-603. Contents of environmental assessment. (1) When required, the environmental assessment must accompany the subdivision application and must include:

(a) for a major subdivision:

(i) a description of every body or stream of surface water that may be affected by the proposed subdivision, together with available ground water information, and a description of the topography, vegetation, and wildlife use within the area of the proposed subdivision;

(ii) a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608;

(iii) a community impact report containing a statement of anticipated needs of the proposed subdivision for local services, including education and busing; roads and maintenance; water, sewage, and solid waste facilities; and fire and police protection; and

(iv) additional relevant and reasonable information related to the applicable regulatory criteria adopted under 76-3-501 as may be required by the governing body;

(b) except as provided in 76-3-609, for a minor subdivision, a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608.

(2) An environmental assessment conducted pursuant to this chapter is distinct from an environmental review conducted pursuant to Title 75, chapter 1. The standards of review applicable to an environmental review conducted pursuant to Title 75, chapter 1, do not apply to an environmental assessment conducted pursuant to this chapter.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(4); amd. Sec. 2, Ch. 236, L. 1981; amd. Sec. 5, Ch. 468, L. 1995; amd. Sec. 6, Ch. 298, L. 2005; amd. Sec. 1, Ch. 362, L. 2017.

76-3-604. Review of subdivision application — review for required elements and sufficiency of information. (1) (a) A subdivision application is considered to be received on the date of delivery to the reviewing agent or agency and when accompanied by the review fee submitted as provided in 76-3-602.

(b) Within 5 working days of receipt of a subdivision application, the reviewing agent or agency shall determine whether the application contains all of the listed materials as required by 76-3-504(1)(a) and shall notify the subdivider or, with the subdivider's written permission, the subdivider's agent of the reviewing agent's or agency's determination. If the reviewing agent or agency determines that elements are missing from the application, the reviewing agent or agency shall identify those elements in the notification.

(2) (a) Within 15 working days after the reviewing agent or agency notifies the subdivider or the subdivider's agent that the application contains all of the required elements as provided in subsection (1), the reviewing agent or agency shall determine whether the application and required elements contain detailed, supporting information that is sufficient to allow for the review of the proposed subdivision under the provisions of this chapter and the local regulations adopted pursuant to this chapter and shall notify the subdivider or, with the subdivider's written permission, the subdivider's agent of the reviewing agent's or agency's determination.

(b) If the reviewing agent or agency determines that information in the application is not sufficient to allow for review of the proposed subdivision, the reviewing agent or agency shall identify the insufficient information in its notification.

(c) A determination that an application contains sufficient information for review as provided in this subsection (2) does not ensure that the proposed subdivision will be approved or conditionally approved by the governing body and does not limit the ability of the reviewing agent or agency or the governing body to request additional information during the review process.

(3) The time limits provided in subsections (1) and (2) apply to each submittal of the application until:

(a) a determination is made that the application contains the required elements and sufficient information; and

(b) the subdivider or the subdivider's agent is notified.

(4) After the reviewing agent or agency has notified the subdivider or the subdivider's agent that an application contains sufficient information as provided in subsection (2), the governing body shall approve, conditionally approve, or deny the proposed subdivision within 60 working days or 80 working days if the proposed subdivision contains 50 or more lots, based on its determination of whether the application conforms to the provisions of this chapter and to the local regulations adopted pursuant to this chapter, unless:

(a) the subdivider and the reviewing agent or agency agree to an extension or suspension of the review period, not to exceed 1 year; or

(b) a subsequent public hearing is scheduled and held as provided in 76-3-615.

(5) (a) If the governing body fails to comply with the time limits under subsection (4), the governing body shall pay to the subdivider a financial penalty of $50 per lot per month or a pro rata portion of a month, not to exceed the total amount of the subdivision review fee collected by the governing body for the subdivision application, until the governing body denies, approves, or conditionally approves the subdivision.

(b) The provisions of subsection (5)(a) do not apply if the review period is extended or suspended pursuant to subsection (4).

(6) If the governing body denies or conditionally approves the proposed subdivision, it shall send the subdivider a letter, with the appropriate signature, that complies with the provisions of 76-3-620.

(7) (a) The governing body shall collect public comment submitted at a hearing or hearings regarding the information presented pursuant to 76-3-622 and shall make any comments submitted or a summary of the comments submitted available to the subdivider within 30 days after conditional approval or approval of the subdivision application and preliminary plat.

(b) The subdivider shall, as part of the subdivider's application for sanitation approval, forward the comments or the summary provided by the governing body to the:

(i) reviewing authority provided for in Title 76, chapter 4, for subdivisions that will create one or more parcels containing less than 20 acres; and

(ii) local health department or board of health for proposed subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres.

(8) (a) For a proposed subdivision that will create one or more parcels containing less than 20 acres, the governing body may require approval by the department of environmental quality as a condition of approval of the final plat.

(b) For a proposed subdivision that will create one or more parcels containing 20 acres or more, the governing body may condition approval of the final plat upon the subdivider demonstrating, pursuant to 76-3-622, that there is an adequate water source and at least one area for a septic system and a replacement drainfield for each lot.

(c) Except for lots served by a hauled water cistern, an adequate municipal facility, or an adequate county water and/or sewer district facility, as defined in 76-4-102, or that are determined to not need water, a determination may be made that an application for a proposed subdivision contains the required elements and sufficient information for review if the applicant demonstrates that each lot has:

(i) a water right under Title 85, chapter 2;

(ii) a completed technical analysis for a permit or change application under Title 85, chapter 2; or

(iii) a notice of intent to appropriate groundwater authorized by the department of natural resources and conservation pursuant to 85-2-306.

(9) (a) Review and approval, conditional approval, or denial of a proposed subdivision under this chapter may occur only under those regulations in effect at the time a subdivision application is determined to contain sufficient information for review as provided in subsection (2).

(b) If regulations change during the review periods provided in subsections (1) and (2), the determination of whether the application contains the required elements and sufficient information must be based on the new regulations.

(10) Unless otherwise provided by law, the governing body may review but does not have approval authority of the governing documents of the subdivision or amendments to the governing documents unless the governing documents directly and materially impact a condition of subdivision approval.

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part); amd. Sec. 1, Ch. 236, L. 1999; amd. Sec. 24, Ch. 582, L. 1999; amd. Sec. 4, Ch. 527, L. 2001; amd. Sec. 7, Ch. 298, L. 2005; amd. Sec. 5, Ch. 302, L. 2005; amd. Sec. 2, Ch. 405, L. 2009; amd. Sec. 3, Ch. 109, L. 2013; amd. Sec. 3, Ch. 319, L. 2021; amd. Sec. 2, Ch. 708, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 708, L. 2025. Amendment effective January 1, 2026.

Applicability: Section 9, Ch. 708, L. 2025, provided: "[This act] applies to subdivisions that are reviewed pursuant to Title 76, chapter 3, on or after [the effective date of this act]." Effective January 1, 2026.

76-3-605. Hearing on subdivision application. (1) Except as provided in 76-3-609 and 76-3-616 and subject to the regulations adopted pursuant to 76-3-504(1)(o) and 76-3-615, at least one public hearing on the subdivision application must be held by the governing body, its authorized agent or agency, or both and the governing body, its authorized agent or agency, or both shall consider all relevant evidence relating to the public health, safety, and welfare, including the environmental assessment if required, to determine whether the subdivision application should be approved, conditionally approved, or denied by the governing body.

(2) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall hold joint hearings on the subdivision application and annexation whenever possible.

(3) Notice of the hearing must be published as provided in 7-1-2121 if the governing body is a county commission or as provided in 7-1-4127 for a time period in accordance with 7-1-4127(7)(b) if the governing body is a city commission or a town council. The subdivider, each property owner of record whose property is immediately adjoining the land included in the preliminary plat, and each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat must also be notified of the hearing by registered or certified mail postmarked not less than 15 business days prior to the date of the hearing.

(4) When a hearing is held by an agent or agency designated by the governing body, the agent or agency shall act in an advisory capacity and recommend to the governing body the approval, conditional approval, or denial of the proposed subdivision. This recommendation must be submitted to the governing body in writing not later than 10 working days after the public hearing.

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part); amd. Sec. 2, Ch. 89, L. 1981; amd. Sec. 21, Ch. 526, L. 1983; amd. Sec. 25, Ch. 582, L. 1999; amd. Sec. 8, Ch. 298, L. 2005; amd. Sec. 5, Ch. 455, L. 2007; amd. Sec. 12, Ch. 272, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 12, Ch. 272, L. 2025. Amendment effective October 1, 2025.

76-3-606. Repealed. Sec. 11, Ch. 468, L. 1995.

History: En. Sec. 6, Ch. 500, L. 1973; amd. Sec. 4, Ch. 334, L. 1974; R.C.M. 1947, 11-3864(1), (2); amd. Sec. 1, Ch. 703, L. 1979.

76-3-607. Repealed. Sec. 11, Ch. 468, L. 1995.

History: En. Sec. 6, Ch. 500, L. 1973; amd. Sec. 4, Ch. 334, L. 1974; R.C.M. 1947, 11-3864(3) thru (7).

76-3-608. Criteria for local government review. (1) The basis for the governing body's decision to approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application, preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the proposed subdivision meets the requirements of this chapter. A governing body may not deny approval of a proposed subdivision based solely on the subdivision's impacts on educational services or based solely on parcels within the subdivision having been designated as wildland-urban interface parcels under 76-13-145.

(2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as applicable.

(3) A subdivision proposal must undergo review for the following primary criteria:

(a) except when the governing body has established an exemption pursuant to subsection (6) or except as provided in 76-3-509, 76-3-609(2) or (4), or 76-3-616, the specific, documentable, and clearly defined impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety, excluding any consideration of whether the proposed subdivision will result in a loss of agricultural soils;

(b) compliance with:

(i) the survey requirements provided for in part 4 of this chapter;

(ii) the local subdivision regulations provided for in part 5 of this chapter; and

(iii) the local subdivision review procedure provided for in this part;

(c) the provision of easements within and to the proposed subdivision for the location and installation of any planned utilities; and

(d) the provision of legal and physical access to each parcel within the proposed subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

(4) The governing body may require the subdivider to design the proposed subdivision to reasonably minimize potentially significant adverse impacts identified through the review required under subsection (3) but may not require a set-aside of land or monetary contribution

for the loss of agricultural soils. Pursuant to 76-3-620, the governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

(5) (a) In reviewing a proposed subdivision under subsection (3) and when requiring mitigation under subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the impacts of a proposed development may be deemed unmitigable and will preclude approval of the subdivision.

(b) When requiring mitigation under subsection (4) and consistent with 76-3-620, a governing body shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider.

(6) (a) A governing body may conditionally approve or deny a proposed subdivision as a result of the water and sanitation information provided pursuant to 76-3-622 or public comment received pursuant to 76-3-604 on the information provided pursuant to 76-3-622 only if the conditional approval or denial is based on existing subdivision, zoning, or other regulations that the governing body has the authority to enforce.

(b) Except for proposed subdivisions served by a hauled water cistern, an adequate municipal facility, or an adequate county water and/or sewer district facility, as defined in 76-4-102, or that are determined to not need water, a governing body may require as a condition of subdivision approval that an applicant obtain approval from the department of natural resources and conservation to appropriate water pursuant to Title 85, chapter 2.

(7) A governing body may not require as a condition of subdivision approval that a property owner waive a right to protest the creation of a special improvement district or a rural improvement district for capital improvement projects that does not identify the specific capital improvements for which protest is being waived. A waiver of a right to protest may not be valid for a time period longer than 20 years after the date that the final subdivision plat is filed with the county clerk and recorder.

(8) A governing body may not approve a proposed subdivision if any of the features and improvements of the subdivision encroach onto adjoining private property in a manner that is not otherwise provided for under chapter 4 or this chapter or if the well isolation zone of any proposed well to be drilled for the proposed subdivision encroaches onto adjoining private property unless the owner of the private property authorizes the encroachment. For the purposes of this section, "well isolation zone" has the meaning provided in 76-4-102.

(9) If a federal or state governmental entity submits a written or oral comment or an opinion regarding wildlife, wildlife habitat, or the natural environment relating to a subdivision application for the purpose of assisting a governing body's review, the comment or opinion may be included in the governing body's written statement under 76-3-620 only if the comment or opinion provides scientific information or a published study that supports the comment or opinion. A governmental entity that is or has been involved in an effort to acquire or assist others in acquiring an interest in the real property identified in the subdivision application shall disclose that the entity has been involved in that effort prior to submitting a comment, an opinion, or information as provided in this subsection.

(10) Findings of fact by the governing body concerning whether the development of the proposed subdivision meets the requirements of this chapter must be based on the record as a whole. The governing body's findings of fact must be sustained unless they are arbitrary, capricious, or unlawful.

History: **En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(4); amd. Sec. 5, Ch. 272, L. 1993; amd. Sec. 6, Ch. 468, L. 1995; amd. Sec. 26, Ch. 582, L. 1999; amd. Sec. 7, Ch. 348, L. 2001; amd. Sec. 10, Ch. 298, L. 2005; amd. Sec. 6, Ch. 302, L. 2005; amd. Sec. 6, Ch. 455, L. 2007; amd. Sec. 1, Ch. 406, L. 2009; amd. Sec. 17, Ch. 446, L. 2009; amd. Sec. 1, Ch. 409, L. 2011; amd. Sec. 1, Ch. 112, L. 2013; amd. Sec. 2, Ch. 195, L. 2013; amd. Sec. 2, Ch. 362, L. 2017; amd. Sec. 1, Ch. 275, L. 2021; amd. Sec. 4, Ch. 319, L. 2021; amd. Sec. 3, Ch. 708, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 708, L. 2025. Amendment effective January 1, 2026.

Applicability: Section 9, Ch. 708, L. 2025, provided: "[This act] applies to subdivisions that are reviewed pursuant to Title 76, chapter 3, on or after [the effective date of this act]." Effective January 1, 2026.

76-3-609. Review procedure for minor subdivisions — determination of sufficiency of application — governing body to adopt regulations. (1) Except as provided in subsections (6) through (8), minor subdivisions must be reviewed as provided in this section and subject to the applicable local regulations adopted pursuant to 76-3-504.

(2) If the tract of record proposed to be subdivided has not been subdivided or created by a subdivision under this chapter or has not resulted from a tract of record that has had more than five parcels created from that tract of record under 76-3-201 or 76-3-207 since October 1, 2003, then the proposed subdivision is a first minor subdivision from a tract of record and, when legal and physical access to all lots is provided, must be reviewed as follows:

(a) Except as provided in subsection (2)(b), the governing body shall approve, conditionally approve, or deny the first minor subdivision from a tract of record within 35 working days of a determination by the reviewing agent or agency that the application contains required elements and sufficient information for review. The determination and notification to the subdivider must be made in the same manner as is provided in 76-3-604(1) through (3).

(b) The subdivider and the reviewing agent or agency may agree to an extension or suspension of the review period, not to exceed 1 year.

(c) Except as provided in subsection (2)(d)(ii), an application must include a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608(3).

(d) The following requirements do not apply to the first minor subdivision from a tract of record as provided in subsection (2):

(i) the requirement to prepare an environmental assessment; and

(ii) the requirement to review the subdivision for the criteria contained in 76-3-608(3)(a) if the minor subdivision is proposed in the portion of a jurisdictional area that has adopted zoning regulations that address the criteria in 76-3-608(3)(a).

(e) The governing body or its authorized agent or agency may not hold a public hearing or a subsequent public hearing under 76-3-615 for a first minor subdivision from a tract of record as described in subsection (2).

(f) The governing body may adopt regulations that establish requirements for the expedited review of the first minor subdivision from a tract of record. The following apply to a proposed subdivision reviewed under the regulations:

(i) except as provided in subsection (2)(d), the provisions of 76-3-608(3); and

(ii) the provisions of Title 76, chapter 4, part 1, whenever approval is required by those provisions.

(3) Except as provided in 76-3-616 and subsection (4) of this section, any minor subdivision that is not a first minor subdivision from a tract of record, as provided in subsection (2), is a subsequent minor subdivision and must be reviewed as provided in 76-3-601 through 76-3-605, 76-3-608, 76-3-610 through 76-3-614, and 76-3-620.

(4) The governing body may adopt subdivision regulations that establish requirements for review of subsequent minor subdivisions that meet or exceed the requirements that apply to the first minor subdivision, as provided in subsection (2) and this chapter.

(5) (a) Review and approval, conditional approval, or denial of a subdivision under this chapter may occur only under those regulations in effect at the time that a subdivision application is determined to contain sufficient information for review as provided in subsection (2).

(b) If regulations change during the period that the application is reviewed for required elements and sufficient information, the determination of whether the application contains the required elements and sufficient information must be based on the new regulations.

(6) First and subsequent minor subdivisions must be reviewed using the administrative process provided for in subsection (7) if the proposed subdivision:

(a) is located in an area that is subject to and complies with zoning regulations adopted pursuant to Title 76, chapter 2, part 2 or 3, that, at a minimum, address development intensity through densities, bulk and dimensional requirements, and use standards;

(b) has a will-serve letter from a municipal water and sewer service or by a county water and/or sewer district created under 7-13-2203 that supplies both water and sewer services;

(c) has existing legal and physical access to each lot; and

(d) does not require a variance to any of the contents of the subdivision regulations required in 76-3-504(1)(g).

(7) An administrative minor subdivision meeting the requirements of subsection (6) is exempt from:

(a) submitting the summary of probable impacts based on criteria described in 76-3-608(3) and the environmental assessment required in 76-3-603;

(b) the review criteria described in 76-3-608(3)(a); and

(c) the requirements of subsections (2) through (5) of this section.

(8) (a) For administrative minor subdivisions, the subdivision administrator appointed by the governing body shall:

(i) assume all decision-making authority of the governing body provided in 76-3-608;

(ii) approve, conditionally approve, or deny an administrative minor subdivision and issue a written statement pursuant to 76-3-620 within 30 working days of a determination by the reviewing agent or agency that the application contains required elements and sufficient information for review as provided in 76-3-604(1) through (3); and

(iii) immediately on a determination that the application meets the requirements of 76-3-604(1) through (3), notify by first-class mail of the pending application:

(A) each property owner of record whose property is immediately adjoining the land included in the preliminary plat; and

(B) each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat.

(b) If a party identified in 76-3-625(3) objects to a subdivision administrator's decision to approve, conditionally approve, or deny an administrative minor subdivision, the party may request in writing that the subdivision administrator forward the application on to the governing body. The governing body shall sustain the subdivision administrator's decision based on the record as a whole unless the decision was arbitrary, capricious, or unlawful. The governing body has 15 working days from the receipt of the request to review a decision to approve, conditionally approve, or deny the administrative minor subdivision and make a final determination.

(9) As used in this section, "administrative minor subdivision" means a subdivision meeting the requirements of subsection (6). All the requirements of Title 76, chapter 3, except those exempt in subsections (7) and (8), apply to an administrative minor subdivision.

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(6); amd. Sec. 2, Ch. 579, L. 1985; amd. Sec. 2, Ch. 256, L. 1987; amd. Sec. 7, Ch. 468, L. 1995; amd. Sec. 2, Ch. 236, L. 1999; amd. Sec. 11, Ch. 298, L. 2005; amd. Sec. 7, Ch. 455, L. 2007; amd. Sec. 18, Ch. 446, L. 2009; amd. Sec. 1, Ch. 331, L. 2023; amd. Sec. 1, Ch. 340, L. 2023.

76-3-610. Effect of approval of application and preliminary plat. (1) Upon approving or conditionally approving an application and preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. This approval must be in force for not more than 3 calendar years or less than 1 calendar year. At the end of this period the governing body may, at the request of the subdivider, extend its approval for a mutually agreed-upon period of time. Any mutually agreed-upon extension must be in writing and dated and signed by the members of the governing body and the subdivider or subdivider's agent. The governing body may issue more than one extension.

(2) Except as provided in 76-3-507, after the application and preliminary plat are approved, the governing body and its subdivisions may not impose any additional conditions as a prerequisite to final plat approval if the approval is obtained within the original or extended approval period as provided in subsection (1).

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part); amd. Sec. 1, Ch. 223, L. 1981; amd. Sec. 1, Ch. 190, L. 1983; amd. Sec. 12, Ch. 298, L. 2005; amd. Sec. 19, Ch. 446, L. 2009; amd. Sec. 1, Ch. 252, L. 2011.

76-3-611. Review of final plat. (1) The governing body or the agent or agency designated by the governing body shall examine each final plat, and the governing body shall approve the plat only if:

(a) it conforms to the conditions of approval set forth on the preliminary plat and to the terms of this chapter and regulations adopted pursuant to this chapter; and

(b) the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be subdivided have been paid.

(2) (a) The governing body may require that final plats and certificates of survey be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the county clerk and recorder. When the survey data shown on the plat or certificate of survey meets the conditions pursuant to this chapter, the examining land surveyor shall certify the compliance in a printed or stamped certificate on the plat or certificate of survey. The certificate must be signed by the surveyor.

(b) A land surveyor may not act as an examining land surveyor in regard to a plat or certificate of survey in which the surveyor has a financial or personal interest.

(3) (a) A final plat is considered to be received on the date of delivery to the governing body or the agent or agency designated by the governing body when accompanied by the review fee submitted as provided in 76-3-602.

(b) Within 20 working days of receipt of a final plat, the governing body or the agent or agency designated by the governing body shall determine whether the final plat contains the information required under subsections (1) and (2) and shall notify the subdivider or, with the subdivider's written permission, the subdivider's agent of that determination in writing. If the governing body or its agent or agency determines that the final plat does not contain the information required under subsections (1) and (2), the governing body or its agent or agency shall identify the final plat's defects in the notification.

(c) The governing body or its agent or agency may review subsequent submissions of the final plat only for information found to be deficient during the original review of the final plat under subsection (3)(b).

(d) If the governing body determines that an examining land surveyor must review a final plat pursuant to subsection (2)(a), the governing body or its agent or agency shall identify the requirement in its notification.

(e) The time limits provided in subsection (3)(b) apply to each submission of the final plat until a written determination is made that the final plat contains the information required under subsections (1) and (2) and the subdivider or the subdivider's agent is notified.

(4) If a determination is made under subsection (3)(b) that the final plat contains the information required under subsections (1) and (2), the governing body shall review and approve or deny the final plat within 20 working days.

(5) The subdivider or the subdivider's agent and the governing body or its reviewing agent or agency may mutually agree to extend the review periods provided for in this section.

History: En. Sec. 9, Ch. 500, L. 1973; amd. Sec. 7, Ch. 334, L. 1974; amd. Sec. 1, Ch. 553, L. 1977; R.C.M. 1947, 11-3867(part); amd. Sec. 1, Ch. 273, L. 1981; amd. Sec. 1, Ch. 293, L. 1995; amd. Sec. 1, Ch. 251, L. 2017.

76-3-612. Subdivision guarantee required for review process. (1) The subdivider shall submit with the final plat a subdivision guarantee issued by an authorized title insurer or its title insurance producer showing the names of the owners of record of the land to be subdivided and the names of lienholders or claimants of record against the land and the written consent to the subdivision by the owners of the land, if other than the subdivider, and any lienholders or claimants of record against the land.

(2) The governing body may provide for the review of the subdivision guarantee for the land in question by the county attorney where the land lies in an unincorporated area or by the city or town attorney when the land lies within the limits of a city or town.

(3) As used in this section, "subdivision guarantee" means a form of guarantee that is approved by the commissioner of insurance and is specifically designed to disclose the information required in subsection (1).

History: En. Sec. 7, Ch. 500, L. 1973; amd. Sec. 5, Ch. 334, L. 1974; R.C.M. 1947, 11-3865; amd. Sec. 186, Ch. 575, L. 1981; amd. Sec. 1, Ch. 210, L. 2021.

76-3-613. Index of plats to be kept by county clerk and recorder. (1) The county clerk and recorder shall maintain an index of all recorded subdivision plats and certificates of survey.

(2) This index shall list plats and certificates of survey by the quarter section, section, township, and range in which the platted or surveyed land lies and shall list the recording or filing numbers of all plats depicting lands lying within each quarter section. Each quarter

section list shall be definitive to the exclusion of all other quarter sections. The index shall also list the names of all subdivision plats in alphabetical order and the place where filed.

History: En. Sec. 15, Ch. 500, L. 1973; R.C.M. 1947, 11-3873.

76-3-614. Correction of recorded plat. When a recorded plat does not definitely show the location or size of lots or blocks or the location or width of any street or alley, the governing body may at its own expense cause a new and correct survey and plat to be made and recorded in the office of the county clerk and recorder. The corrected plat must, to the extent possible, follow the plan of the original survey and plat. The surveyor making the resurvey shall endorse the corrected plat referring to the original plat and noting the defect existing therein and the corrections made.

History: En. Sec. 16, Ch. 500, L. 1973; R.C.M. 1947, 11-3874.

76-3-615. Subsequent hearings — consideration of new information — requirements for regulations. (1) The regulations adopted pursuant to 76-3-504(1)(o) must comply with the provisions of this section.

(2) The governing body shall determine whether public comments or other information presented to the governing body at a hearing held pursuant to 76-3-605 constitutes relevant, new information regarding a subdivision application or a substantial change to the design of the subdivision that has never been submitted as evidence or considered by either the governing body or its agent or agency and has a substantial effect on the governing body's consideration of the application.

(3) If the governing body determines that the information presented to the governing body constitutes the information described in subsection (2), the governing body may:

(a) approve, conditionally approve, or deny the proposed subdivision without basing its decision on the new information if the governing body determines that the new information is either irrelevant or not credible or the change to the design of the subdivision does not substantially impact the analysis of potentially significant adverse impacts; or

(b) schedule or direct its agent or agency to schedule a subsequent public hearing for consideration of only the new information, including a substantial change to the design of the subdivision for purposes of considering its findings of fact and conclusions and any proposed conditions of approval in light of the new information that the governing body will rely on in making its decision on the proposed subdivision.

(4) If a public hearing is held as provided in subsection (3)(b), the 60-working-day review period required in 76-3-604(4) is suspended and the new hearing must be noticed and held within 45 days of the governing body's determination to schedule a new hearing. After the new hearing, the 60-working-day time limit resumes at the governing body's next scheduled public meeting for which proper notice for the public hearing on the subdivision application can be provided. The governing body may not consider any information regarding the subdivision application that is presented after the hearing when making its decision to approve, conditionally approve, or deny the proposed subdivision.

History: En. Sec. 9, Ch. 298, L. 2005; amd. Sec. 1, Ch. 171, L. 2023.

76-3-616. Exemption for certain subdivisions. (1) A subdivision that meets the criteria in subsection (2) is exempt from the following requirements:

(a) preparation of an environmental assessment as required by 76-3-603;

(b) a public hearing on the subdivision application pursuant to 76-3-605; and

(c) review of the subdivision for the criteria listed in 76-3-608(3)(a).

(2) To qualify for the exemptions in subsection (1), a subdivision must meet the following criteria:

(a) the proposed subdivision is entirely within an area inside or adjacent to an incorporated city or town where the governing body has adopted a growth policy that includes the provisions of 76-1-601(4)(c);

(b) the proposed subdivision is entirely within an area subject to zoning adopted pursuant to 76-2-203 or 76-2-304 that avoids, significantly reduces, or mitigates adverse impacts identified in a growth policy that includes the provisions of 76-1-601(4)(c); and

(c) the subdivision proposal includes a description of future public facilities and services, using maps and text, that are necessary to efficiently serve the projected development.

History: En. Sec. 4, Ch. 455, L. 2007.

76-3-617. Phased development — application requirements — hearing required. (1) A subdivider applying for phased development review shall submit with the phased development application an overall phased development preliminary plat on which independent platted development phases must be presented. The phased development application must contain the information required pursuant to parts 5 and 6 of this chapter for all phases of a development and a schedule for when the subdivider plans to submit for review each phase of the development. The subdivider may change the schedule for review of each phase of the development upon approval of the governing body after a public hearing as provided in subsection (4) if the change does not negate conditions of approval or otherwise adversely affect public health, safety, and welfare.

(2) Except as otherwise provided by this section, the phased development application must be reviewed in conformity with parts 5 and 6 of this chapter. In addition, each phase of the phased development must be reviewed as provided in subsection (4).

(3) The governing body may approve phased developments that extend beyond the time limits set forth in 76-3-610 but all phases of the phased development must be submitted for review and approved, conditionally approved, or denied within 20 years of the date the overall phased development preliminary plat is approved by the governing body.

(4) For any phase of the approved subdivision submitted for final plat approval more than 5 years after the date of preliminary approval of the subdivision, the subdivider shall provide written notice to the governing body not more than 1 year or less than 90 calendar days in advance of submitting the final plat application. The governing body shall hold a public hearing pursuant to 76-3-605(3) within 30 working days after receipt of the written notice from the subdivider to determine whether changed circumstances justify amending any conditions of approval or imposing additional conditions of approval. The governing body may amend or impose additional conditions of approval only if it determines, based on a review of the primary criteria, that the existing conditions of approval are inadequate to mitigate the potentially significant adverse impacts identified during the original review based on changed circumstances. Notwithstanding the provisions of 76-3-610(2), the governing body shall issue supplemental written findings of fact within 20 working days of the hearing. Any additional conditions must be met before final plat approval for each remaining phase and the approval in accordance with 76-3-611 is in force for not more than 3 calendar years or less than 1 calendar year within the maximum timeframe provided in subsection (3).

(5) The governing body may impose a reasonable periodic fee for the review under subsection (4) of the phases in the phased development.

History: En. Sec. 3, Ch. 363, L. 2017; amd. Sec. 2, Ch. 171, L. 2023.

76-3-618 and 76-3-619 reserved.

76-3-620. Review requirements — written statement. (1) In addition to the requirements of 76-3-604 and 76-3-609, following any decision by the governing body to deny or conditionally approve a proposed subdivision, the governing body shall, in accordance with the time limit established in 76-3-504(1)(r), prepare a written statement that:

(a) must be provided to the applicant;

(b) must be made available to the public;

(c) includes information regarding the appeal process for the denial or imposition of conditions;

(d) identifies the regulations and statutes that are used in reaching the decision and explains how they apply to the basis of the decision;

(e) provides the facts and conclusions that the governing body relied upon in making the decision and references documents, testimony, or other materials that form the basis of the decision; and

(f) identifies the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved.

(2) If the governing body conditionally approves the proposed subdivision, each condition required for subdivision approval must identify a specific, documentable, and clearly defined purpose or objective related to the primary criteria set forth in 76-3-608(3) that forms the basis for the condition.

History: En. Sec. 2, Ch. 224, L. 1995; amd. Sec. 13, Ch. 298, L. 2005; amd. Sec. 20, Ch. 446, L. 2009; amd. Sec. 5, Ch. 319, L. 2021.

76-3-621. Park dedication requirement. (1) Except as provided in 76-3-509 or subsections (2), (3), and (6) through (9) of this section, a subdivider shall dedicate to the governing body a cash or land donation equal to:

(a) 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;

(b) 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than 1 acre;

(c) 5% of the area of the land proposed to be subdivided into parcels larger than 1 acre and not larger than 3 acres; and

(d) 2.5% of the area of the land proposed to be subdivided into parcels larger than 3 acres and not larger than 5 acres.

(2) When a subdivision is located totally within an area for which density requirements have been adopted pursuant to a growth policy under chapter 1 or pursuant to zoning regulations under chapter 2, the governing body may establish park dedication requirements based on the community need for parks and the development densities identified in the growth policy or regulations. Park dedication requirements established under this subsection are in lieu of those provided in subsection (1) and may not exceed 0.03 acres per dwelling unit.

(3) A park dedication may not be required for:

(a) land proposed for subdivision into parcels larger than 5 acres;

(b) subdivision into parcels that are all nonresidential;

(c) a subdivision in which parcels are not created, except when that subdivision provides for condominiums;

(d) a subdivision in which only one additional parcel is created; or

(e) except as provided in subsection (8), a first minor subdivision from a tract of record as described in 76-3-609(2).

(4) If the subdivider does not choose a cash donation only, the governing body, in consultation with the subdivider and the planning board or park board that has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation or a combination of both a land and cash donation. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation.

(5) (a) In accordance with the provisions of subsections (5)(b) and (5)(c), the governing body shall use the dedicated money or land for development, acquisition, or maintenance of parks to serve the subdivision.

(b) The governing body may use the dedicated money to acquire, develop, or maintain, within its jurisdiction, parks or recreational areas or for the purchase of public open space or conservation easements only if:

(i) the park, recreational area, open space, or conservation easement is within a reasonably close proximity to the proposed subdivision; and

(ii) the governing body has formally adopted a park plan that establishes the needs and procedures for use of the money.

(c) The governing body may not use more than 50% of the dedicated money for park maintenance.

(6) The local governing body shall waive the park dedication requirement if:

(a) (i) the preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and

(ii) the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under subsection (1);

(b) (i) the preliminary plat provides long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and

(ii) the area of the land proposed to be subdivided, by virtue of providing long-term protection provided for in subsection (6)(b)(i), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1);

(c) the area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections (6)(a) and (6)(b), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1); or

(d) (i) the subdivider provides for land outside of the subdivision to be set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and

(ii) the area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of dedication required under subsection (1).

(7) The local governing body may waive the park dedication requirement if:

(a) the subdivider provides land outside the subdivision that affords long-term protection of critical wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and

(b) the area of the land to be subject to long-term protection, as provided in subsection (7)(a), equals or exceeds the area of the dedication required under subsection (1).

(8) (a) A local governing body may, at its discretion, require a park dedication for:

(i) a subsequent minor subdivision as described in 76-3-609(3); or

(ii) a first minor subdivision from a tract of record as described in 76-3-609(2) if:

(A) the subdivision plat indicates development of condominiums or other multifamily housing;

(B) zoning regulations permit condominiums or other multifamily housing; or

(C) any of the lots are located within the boundaries of a municipality.

(b) A local governing body that chooses to require a park dedication shall specify in regulations the circumstances under which a park dedication will be required.

(9) Subject to the approval of the local governing body and acceptance by the school district trustees, a subdivider may dedicate a land donation provided in subsection (1) to a school district, adequate to be used for school facilities or buildings.

(10) For the purposes of this section:

(a) "cash donation" is the fair market value of the unsubdivided, unimproved land; and

(b) "dwelling unit" means a residential structure in which a person or persons reside.

(11) A land donation under this section may be inside or outside of the subdivision.

History: En. Sec. 9, Ch. 468, L. 1995; amd. Sec. 27, Ch. 582, L. 1999; amd. Sec. 8, Ch. 348, L. 2001; amd. Sec. 1, Ch. 469, L. 2003; amd. Sec. 2, Ch. 333, L. 2005; amd. Sec. 1, Ch. 264, L. 2007; amd. Sec. 21, Ch. 446, L. 2009; amd. Sec. 3, Ch. 589, L. 2025; amd. Sec. 11, Ch. 625, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 3, Ch. 589, L. 2025. Amendment effective October 1, 2025.

See 2025 Session Law for amendment made by sec. 11, Ch. 625, L. 2025. Amendment effective May 13, 2025.

Applicability: Section 8, Ch. 589, L. 2025, provided: "[This act] applies to recreational camping vehicles and mobile home spaces created on or after [the effective date of this act]." Effective October 1, 2025.

Cross-References

Sale, lease, or exchange of dedicated park lands, 7-16-2324.

76-3-622. Water and sanitation information to accompany preliminary plat. (1) Except as provided in subsection (2), the subdivider shall submit to the governing body or to the agent or agency designated by the governing body the information listed in this section for proposed subdivisions that will include new water supply or wastewater facilities. The information must include:

(a) a vicinity map or plan that shows:

(i) the location, within 100 feet outside of the exterior property line of the subdivision and on the proposed lots, of:

(A) flood plains;

(B) surface water features;

(C) springs;

(D) irrigation ditches;

(E) existing, previously approved, and, for parcels less than 20 acres, proposed water wells and wastewater treatment systems, except that the subdivider may locate a water well

anywhere on a lot, parcel, or tract of record if the subdivider maintains the minimum setback distances adopted in rule by the department of environmental quality;

(F) for parcels less than 20 acres, mixing zones identified as provided in subsection (1)(h); and

(G) the representative drainfield site used for the soil profile description as required under subsection (1)(d); and

(ii) the location, within 500 feet outside of the exterior property line of the subdivision, of public water and sewer facilities;

(b) a description of the proposed subdivision's water supply systems, storm water systems, solid waste disposal systems, and wastewater treatment systems, including:

(i) whether the water supply and wastewater treatment systems are individual, shared, multiple user, or public as those systems are defined in rules published by the department of environmental quality; and

(ii) if the water supply and wastewater treatment systems are shared, multiple user, or public, a statement of whether the systems will be public utilities as defined in 69-3-101 and subject to the jurisdiction of the public service commission or exempt from public service commission jurisdiction and, if exempt, an explanation for the exemption;

(c) a drawing of the conceptual lot layout at a scale no smaller than 1 inch equal to 200 feet that shows all information required for a lot layout document in rules adopted by the department of environmental quality pursuant to 76-4-104;

(d) evidence of suitability for new onsite wastewater treatment systems that, at a minimum, includes:

(i) a soil profile description from a representative drainfield site identified on the vicinity map, as provided in subsection (1)(a)(i)(G), that complies with standards published by the department of environmental quality;

(ii) demonstration that the soil profile contains a minimum of 4 feet of vertical separation distance between the bottom of the permeable surface of the proposed wastewater treatment system and a limiting layer; and

(iii) in cases in which the soil profile or other information indicates that ground water is within 7 feet of the natural ground surface, evidence that the ground water will not exceed the minimum vertical separation distance provided in subsection (1)(d)(ii);

(e) for new water supply systems, unless cisterns are proposed, evidence of adequate water availability:

(i) obtained from well logs or testing of onsite or nearby wells;

(ii) obtained from information contained in published hydrogeological reports; or

(iii) as otherwise specified by rules adopted by the department of environmental quality pursuant to 76-4-104;

(f) except for lots served by a hauled water cistern, an adequate municipal facility, or an adequate county water and/or sewer district facility, as defined in 76-4-102, or that are determined to not need water, evidence that each lot has:

(i) a water right under Title 85, chapter 2;

(ii) a completed technical analysis for a permit or change application under Title 85, chapter 2; or

(iii) a notice of intent to appropriate groundwater authorized by the department of natural resources and conservation pursuant to 85-2-306.

(g) evidence of sufficient water quality in accordance with rules adopted by the department of environmental quality pursuant to 76-4-104;

(h) a preliminary analysis of potential impacts to ground water quality from new wastewater treatment systems, using as guidance rules adopted pursuant to 75-5-301 and 75-5-303 related to standard mixing zones for ground water, source specific mixing zones, and nonsignificant changes in water quality. The preliminary analysis may be based on currently available information and must consider the effects of overlapping mixing zones from proposed and existing wastewater treatment systems within and directly adjacent to the subdivision. Instead of performing the preliminary analysis required under this subsection (1)(h), the subdivider may perform a complete nondegradation analysis in the same manner as is required for an application that is reviewed under Title 76, chapter 4.

(2) A subdivider whose land division is excluded from review under 76-4-125(1) is not required to submit the information required in this section.

(3) A governing body may not, through adoption of regulations, require water and sanitation information in addition to the information required under this section unless the governing body complies with the procedures provided in 76-3-511.

History: En. Sec. 4, Ch. 302, L. 2005; amd. Sec. 1, Ch. 165, L. 2013; amd. Sec. 5, Ch. 344, L. 2017; amd. Sec. 2, Ch. 80, L. 2019; amd. Sec. 77, Ch. 324, L. 2021; amd. Sec. 1, Ch. 673, L. 2023; amd. Sec. 4, Ch. 708, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 708, L. 2025. Amendment effective January 1, 2026.

Applicability: Section 9, Ch. 708, L. 2025, provided: "[This act] applies to subdivisions that are reviewed pursuant to Title 76, chapter 3, on or after [the effective date of this act]." Effective January 1, 2026.

76-3-623. Expedited review for certain subdivisions. (1) Except as provided in subsection (9), a subdivision application, regardless of the number of lots, that meets the requirements provided in subsection (3) is entitled to the expedited review process provided in this section at the applicant's request.

(2) A subdivision application that meets the requirements provided in subsection (3) is exempt from:

(a) the preparation of an environmental assessment as required in 76-3-603; and

(b) the review criteria listed in 76-3-608(3)(a).

(3) A subdivision qualifies for the expedited review process provided in this section if the proposed subdivision:

(a) is within:

(i) an incorporated city or town or consolidated city-county government and is subject to an adopted growth policy pursuant to Title 76, chapter 1, and adopted zoning regulations pursuant to Title 76, chapter 2, part 3; or

(ii) a county water and/or sewer district created under 7-13-2203 that provides both water and sewer services or an area outside the boundaries of an incorporated city, town, county, or consolidated city-county that is served by city, town, county, or consolidated city-county water and sewer services and is subject to an adopted growth policy as provided in Title 76, chapter 1, and zoning regulations pursuant to Title 76, chapter 2, part 2, that, at a minimum, address development intensity through minimum lot sizes or densities, bulk and dimensional requirements, and use standards;

(b) complies with zoning regulations adopted pursuant to 76-2-203 or 76-2-304 and complies with the design standards and other subdivision regulations adopted pursuant to 76-3-504; and

(c) includes in its proposal plans for the onsite development of or extension to public infrastructure in accordance with adopted ordinances and regulations.

(4) On submission for expedited review under this section, the subdivision application must be reviewed for required elements and sufficiency of information as provided in 76-3-601(1) through (3) to determine whether the application complies with zoning regulations adopted pursuant to 76-2-203 or 76-2-304 and complies with the design standards and other subdivision regulations adopted pursuant to 76-3-504 and includes in its proposal plans for the onsite development of or extension to public infrastructure in accordance with adopted ordinances and regulations. The application may include a request for variance or deviation from subdivision regulations adopted pursuant to 76-3-504 and in accordance with the provisions of 76-3-506.

(5) The governing body shall:

(a) hold a hearing and approve, conditionally approve, or deny the subdivision application within 35 working days of a determination by the reviewing agent or agency that the application contains required elements and sufficient information for review as provided in subsection (3). If the subdivision application includes a request for variance or deviation from subdivision regulations adopted pursuant to 76-3-504, the time for holding a hearing as required in this subsection (5) must be extended to a total of 45 working days.

(b) provide notice for the hearing required in subsection (5)(a) by publication as provided in 7-1-2121 if the governing body is a county commission or as provided in 7-1-4127 for a time period in accordance with 7-1-4127(7)(b) if the governing body is a city commission or a town council;

(c) approve the application unless public comment or other information demonstrates the application does not comply with:

(i) adopted zoning regulations, design standards, and other requirements of subdivision regulations adopted pursuant to 76-3-504, including any criteria for granting variances or deviations from subdivision regulations adopted pursuant to 76-3-504; or

(ii) adopted ordinances or regulations for the onsite development of or extension to public infrastructure; and

(d) provide to the applicant and the public a written statement within 30 days of the decision to approve or deny a proposed subdivision for expedited review as allowed in this section that provides:

(i) the facts and conclusions that the governing body relied on in making its decision to approve or deny the application; and

(ii) the conditions that apply to the preliminary plat approval that must be satisfied before the final plat may be approved.

(6) The governing body may:

(a) with the agreement of the applicant, grant one extension of the review period allowed in subsection (5)(a) not to exceed 180 calendar days;

(b) adopt conditions of approval only to ensure an approved subdivision application is completed in accordance with the approved application and any applicable requirements pursuant to Title 76, chapter 4; or

(c) delegate to its reviewing agent or agency the requirement to hold a public hearing on the subdivision application as required in this section.

(7) A local governing body may not adopt zoning regulations pursuant to 76-2-203 or 76-2-304, subdivision regulations pursuant to 76-3-504, or other ordinances or regulations that restrict the use of the expedited subdivision review process as provided in this section.

(8) (a) Except as modified in this section, subdivision applications meeting the requirements for an expedited review remain subject to the provisions of 76-3-608(3)(b) through (3)(d) and 76-3-608(6) through (10), 76-3-610 through 76-3-614, 76-3-621, and 76-3-625.

(b) The provisions of this section supersede any provision of this chapter that is in conflict with any provision of this section.

(9) A subdivision located outside of the boundaries of an incorporated city or town may not utilize the expedited review process provided in this section unless the board of county commissioners of the county where the subdivision is located has voted to allow the provisions of this section to apply to subdivisions located outside the boundaries of an incorporated city or town.

(10) An incorporated city, town, or consolidated city-county shall implement the expedited review provided for in this section for a proposed subdivision that meets the criteria in subsection (3)(a)(i) regardless of whether the city, town, or consolidated city-county has incorporated the provisions of this section into the city, town, or consolidated city-county's local subdivision regulations.

History: En. Sec. 1, Ch. 190, L. 2021; amd. Sec. 3, Ch. 171, L. 2023; amd. Sec. 13, Ch. 272, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 13, Ch. 272, L. 2025. Amendment effective October 1, 2025.

76-3-624 reserved.

76-3-625. Violations — actions against governing body. (1) A person who has filed with the governing body an application for a subdivision under this chapter may bring an action in district court to sue the governing body to recover actual damages caused by a final action, decision, or order of the governing body or a regulation adopted pursuant to this chapter within 180 days of the final action, decision, order, or adoption of a regulation. The governing body's decision, based on the record as a whole, must be sustained unless the decision being challenged is arbitrary, capricious, or unlawful.

(2) (a) A party identified in subsection (3) who is aggrieved by a decision of the governing body to approve, conditionally approve, or deny an application and preliminary plat for a proposed subdivision may, within 30 days from the date of the written decision, appeal to the

district court in the county in which the property involved is located to challenge the approval, imposition of conditions, or denial of the preliminary plat.

(b) A party identified in subsection (3) who is aggrieved by any other final decision of the governing body regarding a subdivision may, within 30 days from the date of the written decision, appeal to the district court in the county in which the property involved is located to challenge the decision.

(c) A petition allowed in subsections (2)(a) and (2)(b) must specify the grounds upon which the appeal is made. The governing body's decision, based on the record as a whole, must be sustained unless the decision being challenged is arbitrary, capricious, or unlawful.

(3) The following parties may appeal under the provisions of subsection (2):

(a) the subdivider;

(b) a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the county or municipality where the subdivision is proposed if that landowner can show a likelihood of material injury to the landowner's property or its value;

(c) the county commissioners of the county where the subdivision is proposed; and

(d) (i) a first-class municipality, as described in 7-1-4111, if a subdivision is proposed within 3 miles of its limits;

(ii) a second-class municipality, as described in 7-1-4111, if a subdivision is proposed within 2 miles of its limits; and

(iii) a third-class municipality or a town, as described in 7-1-4111, if a subdivision is proposed within 1 mile of its limits.

(4) For the purposes of this section, "aggrieved" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision.

History: En. Sec. 10, Ch. 468, L. 1995; amd. Sec. 14, Ch. 298, L. 2005; amd. Sec. 22, Ch. 446, L. 2009; amd. Sec. 3, Ch. 362, L. 2017; amd. Sec. 2, Ch. 190, L. 2021.

CHAPTER 4
STATE REGULATION OF SUBDIVISIONS

Part 1 — Sanitation in Subdivisions

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Part 11 — Out-of-State Sales of In-State Subdivisions (Repealed)

Part 12 — In-State Sales of Out-of-State Subdivisions (Repealed)

Chapter Cross-References
Penalties, fees, and interest, Title 76, ch. 4, part 10.

Part 1
Sanitation in Subdivisions

Part Cross-References
Solid waste disposal exception, 75-10-214.
Water use — ground water, Title 85, ch. 2, part 5.

76-4-101. Public policy. It is the public policy of this state to extend present laws controlling water supply, sewage disposal, and solid waste disposal to include individual wells affected by adjoining sewage disposal and individual sewage systems to protect the quality and potability of water for public water supplies and domestic uses and to protect the quality of water for other beneficial uses, including uses relating to agriculture, industry, recreation, and wildlife.

History: En. Sec. 148, Ch. 197, L. 1967; amd. Sec. 1, Ch. 509, L. 1973; R.C.M. 1947, 69-5001.

76-4-102. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Adequate county water and/or sewer district facilities" means facilities provided by a county water and/or sewer district incorporated under Title 7, chapter 13, that operate in compliance with Title 75, chapters 5 and 6.

(2) "Adequate municipal facilities" means municipally, publicly, or privately owned facilities that supply water, treat sewage, or dispose of solid waste for all or most properties within the boundaries of a municipality and that are operating in compliance with Title 75, chapters 5 and 6, including development plans approved by the department pursuant to 75-6-130.

(3) "Board" means the board of environmental review.

(4) "Certifying authority" means a municipality or a county water and/or sewer district that meets the eligibility requirements established by the department under 76-4-104(7).

(5) "Department" means the department of environmental quality.

(6) "Eligible county water and/or sewer district" means a county water district, a county sewer district, or a county water and sewer district that:

(a) is incorporated under 7-13-2203;

(b) is operated in compliance with Title 75, chapters 5 and 6; and

(c) employs or retains a professional engineer.

(7) "Extension of a public sewage system" means a sewerline that connects two or more sewer service lines to a sewer main.

(8) "Extension of a public water supply system" means a waterline that connects two or more water service lines to a water main.

(9) "Facilities" means public or private facilities for the supply of water or disposal of sewage or solid waste and any pipes, conduits, or other stationary method by which water, sewage, or solid wastes might be transported or distributed.

(10) "Independent reviewer" means a registered sanitarian or registered professional engineer that the department has certified to conduct a review under 76-4-104.

(11) "Individual water system" means any water system that serves one living unit or commercial unit and that is not a public water supply system as defined in 75-6-102.

(12) "Mixing zone" has the meaning provided in 75-5-103.

(13) (a) "Proposed drainfield mixing zone" means a mixing zone submitted for approval under this chapter after March 30, 2011, for a parcel that was created after March 30, 2011.

(b) The term does not include a mixing zone approved under this chapter before March 30, 2011, or a mixing zone approved under Title 50, chapter 2, part 1, before October 1, 2025.

(14) (a) "Proposed well isolation zone" means a well isolation zone submitted for approval under this chapter after October 1, 2013.

(b) The term does not include well isolation zones that existed or were approved under this chapter prior to October 1, 2013.

(15) "Public sewage system" or "public sewage disposal system" means a public sewage system as defined in 75-6-102.

(16) "Public water supply system" has the meaning provided in 75-6-102.

(17) "Regional authority" means any regional water authority, regional wastewater authority, or regional water and wastewater authority organized pursuant to the provisions of Title 75, chapter 6, part 3.

(18) "Registered professional engineer" means a person licensed to practice as a professional engineer under Title 37, chapter 67.

(19) "Registered sanitarian" means a person licensed to practice as a sanitarian under Title 37, chapter 40.

(20) "Reviewing authority" means the department or a local department or board of health certified to conduct a review under 76-4-104.

(21) "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter, or building requiring facilities for the supply of water or the disposition of sewage or solid waste or the construction of water supply or sewage or solid waste disposal, facilities until the department has approved plans for those facilities.

(22) "Sewage" has the meaning provided in 75-5-103.

(23) "Sewer service line" means a sewerline that connects a single building or living unit to a public sewage system or to an extension of a public sewage system.

(24) "Solid waste" has the meaning provided in 75-10-103.

(25) "Subdivision" means a division of land or land so divided that creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision, any condominium, townhome, or townhouse, or any parcel, regardless of size, that provides two or more permanent spaces for recreational camping vehicles or mobile homes.

(26) "Water service line" means a waterline that connects a single building or living unit to a public water supply system or to an extension of a public water supply system.

(27) "Well isolation zone" means the area within a 100-foot radius of a water well or a smaller, site-specific radius as approved by the department.

History: **En. Sec. 149, Ch. 197, L. 1967; amd. Sec. 2, Ch. 509, L. 1973; amd. Sec. 1, Ch. 529, L. 1975; amd. Sec. 2, Ch. 557, L. 1977; R.C.M. 1947, 69-5002(part); amd. Sec. 1, Ch. 490, L. 1985; amd. Sec. 1, Ch. 592, L. 1985; amd. Sec. 240, Ch. 418, L. 1995; amd. Sec. 4, Ch. 280, L. 2001; amd. Sec. 3, Ch. 195, L. 2013; amd. Sec. 1, Ch. 261, L. 2017; amd. Sec. 3, Ch. 80, L. 2019; amd. Sec. 1, Ch. 419, L. 2021; amd. Sec. 6, Ch. 353, L. 2023; amd. Sec. 2, Ch. 611, L. 2023; amd. Sec. 2, Ch. 673, L. 2023; amd. Sec. 2, Ch. 752, L. 2023; amd. Sec. 2, Ch. 236, L. 2025; amd. Sec. 6, Ch. 486, L. 2025.**

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 2, Ch. 236, L. 2025. Amendment effective October 1, 2025.

See 2025 Session Law for amendment made by sec. 6, Ch. 486, L. 2025. Amendment effective October 1, 2025.

76-4-103. What constitutes subdivision. The plat for a subdivision must show all parcels, whether contiguous or not. A parcel that is 20 acres or more in size, exclusive of public roadways, is not subject to review under this part unless the parcel provides two or more permanent spaces for recreational camping vehicles or mobile homes. The rental or lease of one or more parts of a single building, structure, or other improvement, whether existing or proposed, is not a subdivision, as that term is defined in this part, and is not subject to the requirements of this part.

History: En. Sec. 149, Ch. 197, L. 1967; amd. Sec. 2, Ch. 509, L. 1973; amd. Sec. 1, Ch. 529, L. 1975; amd. Sec. 2, Ch. 557, L. 1977; R.C.M. 1947, 69-5002(part); amd. Sec. 2, Ch. 592, L. 1985; amd. Sec. 4, Ch. 80, L. 2019; amd. Sec. 2, Ch. 419, L. 2021.

76-4-104. Rules for administration and enforcement. (1) The department shall, subject to the provisions of 76-4-135, adopt reasonable rules, including adoption of sanitary standards, necessary for administration and enforcement of this part.

(2) The rules and standards must provide the basis for approving subdivisions for various types of public and private water supplies, sewage disposal facilities, storm water drainage ways, and solid waste disposal. The rules and standards must be related to:

(a) size of lots;

(b) contour of land;

(c) porosity of soil;

(d) ground water level;

(e) distance from lakes, streams, and wells;

(f) type and construction of private water and sewage facilities; and

(g) other factors affecting public health and the quality of water for uses relating to agriculture, industry, recreation, and wildlife.

(3) The storm drainage review requirements of this chapter do not apply to divisions or parcels of land that are exempt from review under 76-3-207(1)(a), (1)(d), (1)(e), or (1)(f) that:

(a) are used for a single-family residential purpose; and

(b) include no more than 25% that is impervious.

(4) (a) Except as provided in subsection (4)(b), the rules must provide for the review of subdivisions consistent with 76-4-114 by a local department or board of health, as described in Title 50, chapter 2, part 1, if the local department or board of health employs a registered sanitarian or a registered professional engineer and if the department certifies under subsection (5) that the local department or board is competent to conduct the review.

(b) (i) Except as provided in 75-6-121 and subsection (4)(b)(ii) of this section, a local department or board of health may not review public water supply systems, public sewage systems, or extensions of or connections to these systems.

(ii) A local department or board of health may be certified by the department to review subdivisions proposed to connect to existing municipal or county water and/or sewer district water and wastewater systems previously approved by the department if no extension of the systems is required.

(5) (a) The department shall also adopt standards and procedures for certification and maintaining certification to ensure that a local department, local board of health, or independent reviewer is competent to review the subdivisions as described in subsection (4).

(b) On or before December 31, 2023, the department shall develop procedures for certification of prequalified independent reviewers and develop a training curriculum to ensure compliance with this part.

(6) The department shall review those subdivisions described in subsection (4) if:

(a) a proposed subdivision lies within more than one jurisdictional area and the respective governing bodies are in disagreement concerning approval of or conditions to be imposed on the proposed subdivision; or

(b) the local department or board of health elects not to be certified.

(7) The rules must further provide for:

(a) providing the reviewing authority with a copy of the plat or certificate of survey subject to review under this part and other documentation showing the layout or plan of development, including:

(i) total development area; and

(ii) total number of proposed units and structures requiring facilities for water supply or sewage disposal;

(b) adequate evidence that a water supply that is sufficient in terms of physical quality, quantity, and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed;

(c) evidence concerning the potability of the proposed water supply for the subdivision;

(d) adequate evidence that a sewage disposal facility is sufficient in terms of capacity and dependability;

(e) standards and technical procedures applicable to storm drainage plans and related designs, in order to ensure proper drainage ways, except that the rules must provide a basis for not requiring storm water review under this part for parcels 5 acres and larger on which the total impervious area does not and will not exceed 5%. Nothing in this section relieves any person of the duty to comply with the requirements of Title 75, chapter 5, or rules adopted pursuant to Title 75, chapter 5.

(f) standards and technical procedures applicable to sanitary sewer plans and designs, including soil testing and site design standards for on-lot sewage disposal systems when applicable;

(g) standards and technical procedures applicable to water systems;

(h) standards and technical procedures applicable to solid waste disposal;

(i) adequate evidence that a proposed drainfield mixing zone and a proposed well isolation zone are located wholly within the boundaries of the proposed subdivision where the proposed drainfield or well is located or that an easement or, for public land, other authorization has been obtained from the landowner to place the proposed drainfield mixing zone or proposed well isolation zone outside the boundaries of the proposed subdivision where the proposed drainfield or proposed well is located.

(i) A proposed drainfield mixing zone or a proposed well isolation zone for an individual water system well that is a minimum of 50 feet inside the subdivision boundary may extend outside the boundaries of the subdivision onto adjoining land that is dedicated for use as a right-of-way for roads, railroads, or utilities.

(ii) This subsection (7)(i) does not apply to the divisions provided for in 76-3-207 except those under 76-3-207(1)(b). Nothing in this section is intended to prohibit the extension, construction, or reconstruction of or other improvements to a public sewage system within a well isolation zone that extends onto land that is dedicated for use as a right-of-way for roads, railroads, or utilities.

(j) criteria for granting waivers and deviations from the standards and technical procedures adopted under subsections (7)(e) through (7)(i);

(k) evidence to establish that, if a public water supply system or a public sewage system is proposed, provision has been made for the system and, if other methods of water supply or sewage disposal are proposed, evidence that the systems will comply with state and local laws and regulations that are in effect at the time of submission of the subdivision application under this chapter. Evidence that the systems will comply with local laws and regulations must be in the form of a certification from the local health department as provided by department rule.

(l) evidence to demonstrate that appropriate easements, covenants, agreements, and management entities have been established to ensure the protection of human health and state waters and to ensure the long-term operation and maintenance of water supply, storm water drainage, and sewage disposal facilities;

(m) eligibility requirements for municipalities and county water and/or sewer districts to qualify as a certifying authority under the provisions of 76-4-127;

(n) construction details for individual and shared onsite wastewater systems to be reviewed by the local board of health at the time of septic permitting, except that the reviewing authority may require additional construction detail if the wastewater is not residential strength;

(o) simplified methods for storm water reviews, including acceptable minimum storm water volumes based solely on impervious area for proposed lots with one or two single-family residences; and

(p) a basis for exempting from review facilities previously approved under this chapter or by a local reviewing authority of the facility is not proposed to be changed, is not affected by a proposed change to another facility, and meets the design conditions of its existing approval under this chapter or by the local authority and is operating properly. Existing systems must meet the current setbacks established in rule and subsection (7)(i), unless the lot was created before the relevant effective dates for mixing zones and isolation zones.

(8) The requirements of subsection (7)(i) regarding proposed drainfield mixing zones and proposed well isolation zones apply to all subdivisions or divisions excluded from review under 76-4-125 created after October 1, 2021, except as provided in subsections (7)(i)(i) and (7)(i)(ii).

(9) The department shall:

(a) conduct a biennial review of experimental wastewater system components that have been granted a waiver or deviation as provided in subsection (7)(j);

(b) utilize relevant analysis of wastewater system components approved in other states and data from peer-reviewed third-party studies to conduct the review provided in subsection (9)(a);

(c) propose those experimental wastewater system components that meet the purposes and provisions of this part for adoption into the rules pursuant to this section; and

(d) report to the local government interim committee biennially, in accordance with 5-11-210, the number and type of experimental wastewater system components reviewed and the number and type of system components approved and provide written findings to explain why a system component was reviewed but not approved.

(10) Review and certification or denial of certification that a division of land is not subject to sanitary restrictions under this part may occur only under those rules in effect when a complete application is submitted to the reviewing authority, except that in cases in which current rules would preclude the use for which the lot was originally intended, the applicable requirements in effect at the time the lot was recorded must be applied. In the absence of specific requirements, minimum standards necessary to protect public health and water quality apply.

(11) The reviewing authority may not deny or condition a certificate of subdivision approval under this part unless it provides a written statement to the applicant detailing the circumstances of the denial or condition imposition. The statement must include:

(a) the reason for the denial or condition imposition;

(b) the evidence that justifies the denial or condition imposition; and

(c) information regarding the appeal process for the denial or condition imposition.

(12) (a) Subject to subsection (12)(b), the department may adopt rules that provide technical details and clarification regarding the water and sanitation information required to be submitted under 76-3-622.

(b) A subdivider may locate a water well anywhere on a lot, parcel, or tract of record if the subdivider maintains the minimum setback distances adopted in rule. The reviewing authority may not limit a subdivider to a single proposed well location.

(13) (a) The rules must provide for the review of subdivisions consistent with 76-4-114 by an independent reviewer if the department certifies under subsection (5) of this section that the independent reviewer is competent to conduct the review.

(b) (i) Except as provided in subsection (13)(b)(ii), an independent reviewer may not review public water supply systems, public sewage systems, or extensions of or connections to these systems.

(ii) An independent reviewer may be certified by the department to review subdivisions proposed to connect to existing municipal or county water and/or sewer district water and wastewater systems previously approved by the department if no extension of the system is required.

(c) If 110 or more new files are submitted to the department for review in any 1 month, the department shall assign applications received in that month to independent reviewers unless an independent reviewer is not available.

(d) The department shall reimburse independent reviewers at the same rate the department reimburses local departments or local boards of health certified under subsection (4).

(14) Prior to being assigned an application for review, an independent reviewer shall identify any conflict of interest related to the project under potential review. If the independent reviewer identifies a conflict of interest, the application for review must be assigned to a different independent reviewer.

(15) An independent reviewer acting under the requirements of this chapter shall comply with the provisions of Title 2, chapter 6, for public information requests.

(16) An independent reviewer conducting reviews under this section shall complete documents necessary to complete the review and to comply with real property takings requirements in accordance with Title 70.

History: En. Sec. 152, Ch. 197, L. 1967; amd. Sec. 3, Ch. 509, L. 1973; amd. Sec. 3, Ch. 529, L. 1975; amd. Sec. 3, Ch. 557, L. 1977; R.C.M. 1947, 69-5005(part); amd. Sec. 2, Ch. 378, L. 1985; amd. Sec. 2, Ch. 490, L. 1985; amd. Sec. 1, Ch. 224, L. 1995; amd. Sec. 19, Ch. 471, L. 1995; amd. Sec. 5, Ch. 280, L. 2001; amd. Sec. 7, Ch. 302, L. 2005; amd. Sec. 1, Ch. 83, L. 2011; amd. Sec. 1, Ch. 217, L. 2011; amd. Sec. 4, Ch. 195, L. 2013; amd. Sec. 2, Ch. 261, L. 2017; amd. Sec. 6, Ch. 344, L. 2017; amd. Sec. 5, Ch. 80, L. 2019; amd. Sec. 1, Ch. 49, L. 2021; amd. Sec. 3, Ch. 419, L. 2021; amd. Sec. 3, Ch. 611, L. 2023; amd. Sec. 3, Ch. 673, L. 2023; amd. Sec. 3, Ch. 752, L. 2023; amd. Sec. 3, Ch. 377, L. 2025; amd. Sec. 5, Ch. 708, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 3, Ch. 377, L. 2025. Amendment effective October 1, 2025.

See 2025 Session Law for amendment made by sec. 5, Ch. 708, L. 2025. Amendment effective January 1, 2026.

Applicability: Section 9, Ch. 708, L. 2025, provided: "[This act] applies to subdivisions that are reviewed pursuant to Title 76, chapter 3, on or after [the effective date of this act]." Effective January 1, 2026.

76-4-105. Subdivision fees — subdivision program funding. (1) The department shall adopt rules setting forth fees that do not exceed actual costs for reviewing plats and subdivisions, conducting inspections pursuant to 76-4-107, and conducting enforcement activities pursuant to 76-4-108. The rules must provide for a schedule of fees to be paid by the applicant to the department. The fees must be used for review of plats and subdivisions, conducting inspections pursuant to 76-4-107, and conducting enforcement activities pursuant to 76-4-108. The fees must be based on the complexity of the subdivision, including but not limited to:

(a) the number of lots in the subdivision;

(b) the type of water system to serve the development;

(c) the type of sewage disposal to serve the development; and

(d) the degree of environmental research necessary to supplement the review procedure.

(2) (a) Except as provided for in subsection (2)(b), for extensions requested by the department of the deadlines in 76-4-114, the department shall refund the applicant:

(i) for the first extension, 25% of the fees;

(ii) for the second extension, 50% of the fees; and

(iii) for the third extension, the remaining fees paid.

(b) Reimbursement is not required for extensions:

(i) requested by the applicant under 76-4-114(4); or

(ii) necessary under 76-4-114(5) to obtain the required information in 76-4-115(2).

(c) A reimbursement provided for in this subsection (2) applies only to the portions of the application review being completed by the department.

(3) The department shall adopt rules to determine the distribution of fees to the local reviewing authority for reviews conducted pursuant to 76-4-104, inspections conducted pursuant to 76-4-107, and enforcement activities conducted pursuant to 76-4-108.

(4) The local reviewing authority may establish a fee to review applications, conduct site visits, and review applicable exemptions under this chapter. The fee must be paid directly to the local reviewing authority and may not exceed the local reviewing authority's actual cost that is not otherwise reimbursed by the department from fees adopted pursuant to this section.

History: Ap. p. Sec. 152, Ch. 197, L. 1967; amd. Sec. 3, Ch. 509, L. 1973; amd. Sec. 3, Ch. 529, L. 1975; amd. Sec. 3, Ch. 557, L. 1977; Sec. 69-5005, R.C.M. 1947; Ap. p. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; Sec. 69-5003, R.C.M. 1947; R.C.M. 1947, 69-5003(part), 69-5005(part); amd. Sec. 1, Ch. 553, L. 1981; amd. Sec. 33, Ch. 281, L. 1983; amd. Sec. 1, Ch. 696, L. 1983; amd. Sec. 3, Ch. 490, L. 1985; amd. Sec. 3, Ch. 592, L. 1985; amd. Sec. 1, Ch. 708, L. 1985; (5)En. Sec. 2, Ch. 708, L. 1985; amd. Sec. 9, Ch. 645, L. 1991; amd. Sec. 1, Ch. 514, L. 1993; amd. Sec. 6, Ch. 280, L. 2001; amd. Sec. 6, Ch. 80, L. 2019; amd. Sec. 4, Ch. 419, L. 2021; amd. Sec. 4, Ch. 611, L. 2023.

76-4-106. Cooperation with other governmental agencies. (1) The reviewing authority may require the use of records of all state, county, and municipal agencies and may seek the assistance of those agencies.

(2) State, county, and municipal officers and employees, including local health officers and sanitarians, shall cooperate with the reviewing authority in furthering the purposes of this part so far as is practical and consistent with their own duties.

(3) A local reviewing authority without a registered sanitarian or a registered professional engineer to conduct a review under this part may contract with another local reviewing authority for the services of its registered sanitarian or registered professional engineer to conduct the review.

History: En. Sec. 8, Ch. 509, L. 1973; R.C.M. 1947, 69-5009; amd. Sec. 4, Ch. 490, L. 1985.

76-4-107. Authority to inspect and monitor — certification. (1) In order to carry out the objectives of this part, to monitor the installation of sewage disposal and water supply systems, and to prevent the occurrence of water pollution problems associated with subdivision development, the reviewing authority, whenever any water supply or sewage disposal system is proposed or has been constructed, may:

(a) enter any public or private property, at reasonable times and after presentation of appropriate credentials by an authorized representative of the reviewing authority, to inspect the system in order to ensure that the plans and specifications approved for the system have been adhered to and that the provisions of this part, rules, or orders are being satisfied;

(b) require as a condition of approval that records concerning the operation of a sewage disposal or water supply system be maintained or that monitoring equipment or wells be installed, used, and maintained for the collection of data related to water quality.

(2) The reviewing authority shall require certification from a registered professional engineer that a public water supply system or a public sewage disposal system required by rule to be designed by a registered professional engineer has been constructed according to approved plans and specifications.

History: En. 69-5010 by Sec. 1, Ch. 557, L. 1977; R.C.M. 1947, 69-5010; amd. Sec. 5, Ch. 490, L. 1985; amd. Sec. 1, Ch. 294, L. 1987; amd. Sec. 7, Ch. 80, L. 2019.

76-4-108. Enforcement. (1) If the reviewing authority has reason to believe that a violation of this part or a rule adopted or an order issued under this part has occurred, the reviewing authority may have written notice and an order served personally or by certified mail on the alleged violator or the alleged violator's agent. The notice must state the provision alleged to be violated, the facts alleged to constitute the violation, the corrective action required by the reviewing authority, and the time within which the action is to be taken. A notice and order issued by the department under this section may also assess an administrative penalty as provided in 76-4-109. The alleged violator may, no later than 30 days after service of a notice and order under this section, request a hearing before the local reviewing authority if it issued the notice of violation or the board if the department issued the notice of violation. A request for a hearing must be filed in writing with the appropriate entity and must state the reason for the request. If a request is filed, a hearing must be held within a reasonable time.

(2) In addition to or instead of issuing an order, the reviewing authority may initiate any other appropriate action to compel compliance with this part.

(3) The provisions of this part may be enforced by a reviewing authority other than the department or board only for those divisions described in 76-4-104(4). If a local reviewing authority fails to adequately enforce the provisions of this part, the department or the board may compel compliance with this part under the provisions of this section.

(4) When a local reviewing authority exercises the authority delegated to it by this section, the local reviewing authority is legally responsible for its actions under this part.

(5) If the department or a local reviewing authority determines that a violation of this part, a rule adopted under this part, or an order issued under this part has occurred, the department or the local reviewing authority may revoke its certificate of approval for the subdivision and reimpose sanitary restrictions following written notice to the alleged violator. Upon revocation of a certificate, the person aggrieved by revocation may request a hearing. A hearing request must be filed in writing within 30 days after receipt of the notice of revocation and must state the reason for the request. The hearing is before the board if the department revoked the certificate or before the local reviewing authority if the local reviewing authority revoked the certificate.

(6) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section.

History: En. Sec. 6, Ch. 509, L. 1973; R.C.M. 1947, 69-5007; amd. Sec. 6, Ch. 490, L. 1985; (5)En. Sec. 16, Ch. 490, L. 1985; amd. Sec. 4, Ch. 79, L. 2001; amd. Sec. 7, Ch. 443, L. 2005; amd. Sec. 4, Ch. 752, L. 2023.

76-4-109. Penalties. (1) A person who violates a provision of this part, except 76-4-122(1), or a rule adopted or an order issued under this part is guilty of an offense and subject to a fine in an amount not to exceed $1,000.

(2) (a) In addition to the fine specified in subsection (1), a person who violates any provision of this part or any rule adopted or order issued under this part is subject to an administrative penalty in an amount not to exceed $250 or a civil penalty in an amount not to exceed $1,000. Each day of violation constitutes a separate violation.

(b) Penalties assessed under this subsection (2) must be determined in accordance with the penalty factors in 76-4-1001. An action to recover penalties must be brought in the district court of the county in which the violation occurred.

(3) Penalties imposed under subsection (1) or (2) do not bar enforcement of this part or rules or orders issued under it by injunction or other appropriate remedy.

(4) The purpose of this section is to provide additional and cumulative remedies.

History: En. Sec. 7, Ch. 509, L. 1973; R.C.M. 1947, 69-5008(part); amd. Sec. 7, Ch. 490, L. 1985; amd. Sec. 8, Ch. 443, L. 2005; amd. Sec. 23, Ch. 487, L. 2005; amd. Sec. 44, Ch. 535, L. 2021.

Cross-References

Misdemeanor defined, 45-2-101.

76-4-110. Additional remedies available. This part does not abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor does any provision of this part or any act done by virtue of it estop the state, any municipality or other subdivision of the state, or any person in the exercise of the person's rights in equity or under the common law or statutory law.

History: En. Sec. 7, Ch. 509, L. 1973; R.C.M. 1947, 69-5008(part); amd. Sec. 2520, Ch. 56, L. 2009.

76-4-111. Exemption for certain condominiums, townhomes, and townhouses. (1) Condominiums, townhomes, or townhouses, as those terms are defined in 70-23-102, constructed on land subdivided in compliance with parts 5 and 6 of the Montana Subdivision and Platting Act and this part are exempt from the provisions of this part.

(2) Whenever a parcel of land has previously been reviewed under either department requirements or local health requirements and has received approval for a given number of living units, duplexes, or commercial units, the construction or conversion of the same or a fewer number of condominium units, townhomes, or townhouses on that parcel is not subject to the provisions of this part, provided that, if a new extension of a public water supply system or extension of a public sewage system is required to serve the development, the department reviews and approves plans for the extension.

History: En. Sec. 149, Ch. 197, L. 1967; amd. Sec. 2, Ch. 509, L. 1973; amd. Sec. 1, Ch. 529, L. 1975; amd. Sec. 2, Ch. 557, L. 1977; R.C.M. 1947, 69-5002(part); amd. Sec. 4, Ch. 592, L. 1985; (3)En. Sec. 9, Ch. 592, L. 1985; amd. Sec. 28, Ch. 582, L. 1999; amd. Sec. 7, Ch. 280, L. 2001; amd. Sec. 1, Ch. 62, L. 2017; amd. Sec. 8, Ch. 80, L. 2019; amd. Sec. 8, Ch. 323, L. 2019; amd. Sec. 5, Ch. 419, L. 2021.

Cross-References

Unit Ownership Act, Title 70, ch. 23.

76-4-112. Easements and restrictive covenants. (1) The reviewing authority may require the owner of a proposed subdivision to grant an easement or enter into a restrictive covenant pursuant to rules adopted by the department for the purpose of:

(a) ensuring the long-term operation and maintenance of water supply, storm water drainage, and sewage disposal facilities;

(b) protecting state waters; or

(c) prohibiting the placement of water wells within a ground water mixing zone.

(2) An easement or covenant required under this section must run with the land. The easement or covenant may be enforced by the reviewing authority. The easement or covenant may not be terminated without the consent of the reviewing authority.

History: En. Sec. 1, Ch. 280, L. 2001.

76-4-113. Notification to purchasers. The developer or owner of an approved subdivision shall provide each purchaser of property within the subdivision with a copy of the plat or certificate of survey and the certificate of subdivision approval specifying the approved type and locations of water supply, storm water drainage, and sewage disposal facilities and information regarding connection to municipal, county water and/or sewer district, or regional authority

facilities provided for under 76-4-130. Each subsequent seller of property within the subdivision shall include within the instruments of transfer a reference to the conditions of the certificate of subdivision approval. The seller of any lot recorded with the exemption in 76-4-125(1)(c) shall include within the instruments of transfer a reference to that exclusion and a statement that the lot has not been reviewed or approved under this part. A written verification of notice that is signed by both the seller and the purchaser and is recorded with the county clerk and recorder constitutes conclusive evidence of compliance with this section for that transaction.

History: En. Sec. 2, Ch. 280, L. 2001; amd. Sec. 9, Ch. 80, L. 2019; amd. Sec. 6, Ch. 419, L. 2021.

76-4-114. Review of application. Except as provided in 76-4-125, the applicant shall submit an application for review of a subdivision pursuant to the following procedure:

(1) An applicant may request a preapplication meeting with the reviewing authority prior to submitting an application. The reviewing authority shall schedule the requested meeting between the applicant and the reviewing authority within 30 days of receiving the request from the applicant. The meeting may be conducted in person, via telephone, or via teleconference. For informational purposes only, the reviewing agent shall identify the state laws and rules that may apply to the subdivision review process.

(2) If the proposed development includes onsite sewage disposal facilities, the applicant shall notify the designated agent of the local board of health prior to presenting the subdivision application to the reviewing authority. The agent may conduct a preliminary site assessment to determine whether the site meets applicable state and local requirements.

(3) (a) After submitting an application if required under the Montana Subdivision and Platting Act, the applicant shall submit an application to the reviewing authority. A subdivision application is considered to be received on the date of delivery to the reviewing authority when accompanied by the review fee established pursuant to 76-4-105.

(b) Within 15 days of the receipt of an application, the reviewing authority or independent reviewer shall determine whether the application contains the elements required by 76-4-115(1) to allow for review and shall notify the applicant of the determination. If the reviewing authority or independent reviewer determines that elements are missing from the application, the reviewing agent or agency shall identify those elements in the notification. The applicant shall address the missing elements identified by the reviewing authority or independent reviewer. A determination that an application contains the required elements for review as provided in this subsection (3)(b) does not ensure that the proposed subdivision will be approved and does not limit the ability of the reviewing authority or independent reviewer to request additional information during the review process.

(c) (i) After the reviewing authority or independent reviewer notifies the applicant that the application contains all of the required elements as provided by subsection (3)(b), the reviewing authority or independent reviewer shall make a final decision or a recommendation on the application. Except as provided by subsection (4), the reviewing authority or independent reviewer shall:

(A) make a final decision within 40 days of finding that the application contains all of the required elements if the reviewing authority is the department; or

(B) make a recommendation for approval to the department or deny the application within 30 days of finding that the application contains all of the required elements if the reviewing authority is a local department, local board of health, or independent reviewer. If the department receives a recommendation for approval of the subdivision from a local department, local board of health, or independent reviewer, the department shall make a final decision on the application within 10 days of receiving the recommendation.

(ii) If the department approves the application, the department shall issue a certificate of subdivision approval indicating that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction.

(iii) If the reviewing authority or independent reviewer denies the application, the reviewing authority or independent reviewer shall identify the deficiencies that result in the denial in a notification to the applicant. The reviewing authority may identify other apparent deficiencies in additional information submitted after the initial application.

(d) (i) If the reviewing authority or independent reviewer denies an application and the applicant resubmits a corrected application within 30 days after the date of the denial letter,

the reviewing authority or independent reviewer shall complete review of the resubmitted application within 30 days after receipt of the resubmitted application.

(ii) If the reviewing authority or independent reviewer denies an application and the applicant resubmits a corrected application after 30 days after the date of the denial letter, the reviewing authority or independent reviewer shall complete review of the resubmitted application within:

(A) 55 days after receipt of the resubmitted application if the reviewing authority is the department; or

(B) 45 days after receipt of the resubmitted application if the reviewing authority is a local department, local board of health, or independent reviewer.

(iii) If the review of the resubmitted application is conducted by a local department, local board of health, or independent reviewer and the reviewing authority or independent reviewer makes a recommendation to the department for approval of the application, the department shall make a final decision on the application within 10 days after the local reviewing authority or independent reviewer completes its review under subsection (3)(d)(i) or (3)(d)(ii).

(4) Except as provided in subsections (6) and (7), if the reviewing authority or independent reviewer needs an extension of a deadline in this section to complete its review or if an applicant requests an extension of a deadline, then the reviewing authority or independent reviewer shall notify the applicant of the extension prior to the end of the review deadline. An extension under this subsection may not exceed 30 days.

(5) The reviewing authority or independent reviewer may extend a deadline in this section until the items required in 76-4-115(2) are submitted. The reviewing authority or independent reviewer shall notify the applicant of the extension before the end of the review deadline. The reviewing authority or independent reviewer shall make a final decision within 30 days of receipt of the items required in 76-4-115(2).

(6) The department may extend a deadline under subsections (3)(c) and (3)(d) by 90 days if an environmental assessment is required.

(7) The department may extend a deadline under subsections (3)(c) and (3)(d) by 120 days if an environmental impact statement is required.

(8) An application is considered an overdue application if the department has not provided a response or met the statutory timelines provided in this section.

(9) If a municipal system has been delegated review authority under 75-6-112, the department is not required to review water or sewer facilities that have already been approved by the municipality.

History: En. Sec. 1, Ch. 344, L. 2017; amd. Sec. 10, Ch. 80, L. 2019; amd. Sec. 5, Ch. 611, L. 2023.

76-4-115. Contents of application — supplemental information. (1) The application submitted under 76-4-114 must include preliminary plans and specifications for the proposed development, information required under rules adopted pursuant to this chapter, and any additional information the applicant feels necessary.

(2) In addition to the information required for the submission of the application under subsection (1), before the reviewing authority or independent reviewer makes a final decision on the application, the applicant shall provide:

(a) a copy of the certification from the local health department required by 76-4-104(7)(k);

(b) if required under Title 76, chapter 3, an approval from the local governing body under Title 76, chapter 3; and

(c) any public comments or summaries of public comments collected as provided in 76-3-604(7).

History: En. Sec. 2, Ch. 344, L. 2017; amd. Sec. 6, Ch. 611, L. 2023; amd. Sec. 5, Ch. 752, L. 2023.

76-4-116. Annual and quarterly reports. (1) The department shall report annually to the environmental quality council in accordance with 5-11-210 summarizing the review procedures adopted under Title 76, chapter 4, and recommendations as to whether statutory changes should be made to the process.

(2) The department shall report quarterly to the environmental quality council in accordance with 5-11-210 the number and percentage of overdue files as provided in 76-4-114(8).

(3) (a) Before July 1, 2028, the department shall provide a comprehensive review of subdivision review procedures, including an analysis of the role of independent reviewers, delays in permit issuance, and permit outcomes. The department shall consider and collect input from stakeholders in preparing the comprehensive review.

(b) The department shall report to the environmental quality council the information provided in the comprehensive review required in subsection (3)(a). The environmental quality council may provide recommendations to the department.

History: En. Sec. 3, Ch. 344, L. 2017; amd. Sec. 105, Ch. 261, L. 2021; amd. Sec. 7, Ch. 611, L. 2023.

76-4-117 through 76-4-119 reserved.

76-4-120. Development plans — exceptions. (1) A reviewing authority may not approve a subdivision under this chapter that is subject to a development plan approved under 75-6-130 unless the subdivision is subject to the provisions of Title 76, chapter 3, and the governing body has required department certification before final plat approval pursuant to 76-3-507(5).

(2) A certifying authority may not certify that a division under 76-4-125(1)(d) will be served by adequate municipal or eligible county water and/or sewer district facilities pursuant to a development plan approved under 75-6-130 unless the division is subject to the provisions of Title 76, chapter 3, and the governing body has required department certification before final plat approval pursuant to 76-3-507(5).

History: En. Sec. 2, Ch. 353, L. 2023; amd. Sec. 7, Ch. 486, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 7, Ch. 486, L. 2025. Amendment effective October 1, 2025.

76-4-121. Restrictions on subdivision activities. A person may not dispose of any lot within a subdivision, erect any facility for the supply of water or disposal of sewage or solid waste, erect any building or shelter in a subdivision that requires facilities for the supply of water or disposal of sewage or solid waste, or occupy any permanent buildings in a subdivision until:

(1) a certificate of subdivision approval has been issued pursuant to 76-4-114 indicating that the reviewing authority has approved the subdivision application and that the subdivision is not subject to a sanitary restriction;

(2) the certifying authority has provided certification pursuant to 76-4-127 that the subdivision will be provided with adequate municipal or county water and/or sewer district facilities and adequate storm water drainage; or

(3) the subdivision is otherwise exempt from review under 76-4-125.

History: En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(4); amd. Sec. 8, Ch. 490, L. 1985; amd. Sec. 8, Ch. 280, L. 2001; amd. Sec. 1, Ch. 543, L. 2003; amd. Sec. 7, Ch. 344, L. 2017; amd. Sec. 11, Ch. 80, L. 2019.

76-4-122. Certain filings prohibited. (1) The county clerk and recorder may not file or record any plat, certificate of survey, or townhome, townhouse, or condominium declaration subject to review under this part showing a subdivision unless it complies with the provisions of this part.

(2) A county clerk and recorder may not accept a subdivision plat, certificate of survey, or townhome, townhouse, or condominium declaration subject to review under this part for filing until one of the following conditions has been met:

(a) the person wishing to file the plat, certificate of survey, or townhome, townhouse, or condominium declaration has obtained approval of the local health officer having jurisdiction and has filed the approval with the reviewing authority and a certificate of subdivision approval has been issued pursuant to 76-4-114 indicating that the reviewing authority has approved the subdivision application and that the subdivision is not subject to a sanitary restriction;

(b) the person wishing to file the plat, certificate of survey, or townhome, townhouse, or condominium declaration has obtained a certificate from the certifying authority pursuant to 76-4-127 that the subdivision will be provided with adequate municipal or county water and/or sewer district facilities and adequate storm water drainage; or

(c) the person wishing to file the plat, certificate of survey, or townhome, townhouse, or condominium declaration has placed on the plat, certificate of survey, or townhome, townhouse,

or condominium declaration an acknowledged certification that the subdivision is exempt from review under this part. The certification must quote in its entirety the wording of the applicable exemption.

History: (1)En. Sec. 151, Ch. 197, L. 1967; R.C.M. 1947, 69-5004; (2)En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; Sec. 69-5003, R.C.M. 1947; R.C.M. 1947, 69-5003(7), 69-5004; amd. Sec. 9, Ch. 490, L. 1985; amd. Sec. 5, Ch. 592, L. 1985; amd. Sec. 29, Ch. 582, L. 1999; amd. Sec. 9, Ch. 280, L. 2001; amd. Sec. 13, Ch. 599, L. 2003; amd. Sec. 8, Ch. 344, L. 2017; amd. Sec. 12, Ch. 80, L. 2019.

Cross-References

Classification of municipalities, 7-1-4111.

76-4-123. Repealed. Sec. 15, Ch. 280, L. 2001.

History: En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(1); amd. Sec. 10, Ch. 490, L. 1985; amd. Sec. 6, Ch. 592, L. 1985; amd. Sec. 30, Ch. 582, L. 1999.

76-4-124. Repealed. Sec. 15, Ch. 280, L. 2001.

History: En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(2), (3); amd. Sec. 11, Ch. 490, L. 1985; amd. Sec. 7, Ch. 592, L. 1985; amd. Sec. 31, Ch. 582, L. 1999.

76-4-125. Land divisions excluded from review. (1) A subdivision excluded from the provisions of chapter 3 or chapter 25 must be submitted for review according to the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade the provisions of this part, are not subject to review:

(a) the exclusions cited in 76-3-201, 76-3-207(1)(f), and 76-25-402(1)(a) through (1)(h);

(b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that water or sewage disposal facilities may not be constructed on the additional acquired parcel and that the division does not fall within a previously platted or approved subdivision;

(c) divisions made for purposes other than the construction of water supply or sewage or solid waste disposal facilities as the department specifies by rule;

(d) as certified pursuant to 76-4-127:

(i) new divisions subject to review under chapter 3 or chapter 25;

(ii) divisions or previously divided parcels recorded with sanitary restrictions; or

(iii) divisions or previously divided parcels of land that are exempt from review under 76-3-203, 76-3-207(1)(a), (1)(b), (1)(d), (1)(e), or (1)(f), or 76-25-402(1)(i), (1)(m), or (1)(n);

(e) subject to the provisions of subsection (2), a remainder of an original tract created by segregating a parcel from the tract for purposes of transfer if:

(i) the remainder is served by a public or multiple-user sewage system approved before January 1, 1997, pursuant to local regulations or this chapter; or

(ii) the remainder is 1 acre or larger and has an individual sewage system serving a discharge source that was in existence prior to April 29, 1993, and, if required when installed, the system was approved pursuant to local regulations or this chapter; and

(f) the sale of cabin or home sites as provided for and subject to the limitations in 77-2-318(2).

(2) Consistent with the applicable provisions of 50-2-116, a local health officer may require that, prior to the filing of a plat or a certificate of survey subject to review under this part for the parcel to be segregated from the remainder referenced in subsection (1)(e)(ii), the remainder include acreage or features sufficient to accommodate a replacement drainfield.

(3) A previously divided parcel that meets the eligibility criteria for an existing exemption from this part may use the exemption in lieu of obtaining a certificate of subdivision approval if the appropriate document, exemption certificate, certificate of survey, or subdivision plat filed with the county clerk and recorder cites the applicable exemption in its entirety.

(4) At the request of the owner, the original certificate of subdivision approval shall be reissued for a parcel previously approved under this part if:

(a) the parcel was subsequently divided without review and approval under this part; and

(b) the unapproved parcels are aggregated to return to the original divided parcel as originally approved.

History: En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(8), (10); amd. Sec. 12, Ch. 490, L. 1985; amd. Sec. 1, Ch. 289, L. 1997; amd. Sec. 10, Ch. 280, L. 2001; amd. Sec. 9, Ch. 299, L. 2001; amd. Sec. 8, Ch. 302, L. 2005; amd. Sec. 12, Ch. 337, L. 2005; amd. Sec. 1, Ch. 111, L. 2007; amd. Sec. 11, Ch. 150, L. 2007; amd. Sec. 3, Ch. 405, L. 2009; amd. Sec. 2, Ch. 217, L. 2011; amd. Sec. 25, Ch. 123, L. 2013; amd. Sec. 11, Ch. 379, L. 2013; amd. Sec. 1, Ch. 224, L. 2017; amd. Sec. 9, Ch. 344, L. 2017; amd. Sec. 35, Ch. 3, L. 2019; amd. Sec. 13, Ch. 80, L. 2019; amd. Sec. 7, Ch. 419, L. 2021; amd. Sec. 1, Ch. 518, L. 2021; amd. Sec. 6, Ch. 752, L. 2023; amd. Sec. 5, Ch. 555, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 5, Ch. 555, L. 2025. Amendment effective May 8, 2025.

76-4-126. Right to hearing. (1) Upon a denial of approval of subdivision plans and specifications relating to environmental health facilities, the person who is aggrieved by the denial may request a hearing before the board. A hearing request must be filed, in writing, within 30 days after receipt of the notice of denial and must state the reason for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section.

(2) If the grounds for a denial of approval under this part include noncompliance with local laws or regulations other than those adopting, pursuant to 50-2-116, state minimum standards for the control and disposal of sewage, the board shall upon receipt of a hearing request refer the local compliance issues to the appropriate local authority. After opportunity for a hearing, the local authority shall issue a determination regarding the local compliance issues, and the board shall incorporate the determination of the local authority in the board's final decision.

History: En. Sec. 5, Ch. 509, L. 1973; R.C.M. 1947, 69-5006; amd. Sec. 13, Ch. 490, L. 1985; amd. Sec. 5, Ch. 79, L. 2001.

Cross-References

Contested case defined — applicability of Montana Administrative Procedure Act, 2-4-102.

76-4-127. Notice of certification that adequate storm water drainage and adequate municipal facilities will be provided. (1) To qualify for the exemption from review set out in 76-4-125(1)(d), the certifying authority shall send notice of certification to the reviewing authority that adequate storm water drainage and adequate municipal facilities will be provided for the subdivision. For a subdivision subject to Title 76, chapter 3 or 25, the certifying authority shall send notice of certification to the reviewing authority prior to final plat approval.

(2) The notice of certification must include the following:

(a) the name and address of the applicant;

(b) a copy of the preliminary plat included with the application for the proposed subdivision or a final plat when a preliminary plat is not necessary or, for a subdivision not subject to Title 76, chapter 3 or 25, a copy of the certificate of survey map or amended plat map or a declaration and floor plan, including the layout of each unit proposed to be recorded under Title 70, chapter 23, part 3;

(c) the number of parcels in the subdivision;

(d) a copy of any applicable zoning ordinances in effect;

(e) how construction of the sewage disposal and water supply systems or extensions will be financed;

(f) the relative location of the subdivision to the city or the county water and/or sewer district boundaries of the certifying authority;

(g) certification that adequate municipal or county water and/or sewer district facilities for the supply of water and disposal of sewage and solid waste will be provided. Facilities for subdivisions subject to 76-3-507 or 76-25-413 must be provided within the time required by the governing body under 76-3-507 or 76-25-413, as applicable.

(h) if water supply, sewage disposal, solid waste, or storm water drainage facilities are not municipally owned, certification from the facility owners that adequate facilities will be available; and

(i) certification that the certifying authority has or will review and approve plans to ensure adequate storm water drainage.

(3) A municipality may be authorized to act as a reviewing authority under this section and may self-approve the municipality's own exemption.

History: En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(part); amd. Sec. 14, Ch. 490, L. 1985; amd. Sec. 8, Ch. 592, L. 1985; amd. Sec. 32, Ch. 582, L. 1999; amd. Sec. 11, Ch. 280, L. 2001; amd. Sec. 14, Ch. 599, L. 2003; amd. Secs. 1, 2, Ch. 433, L. 2005; amd. Sec. 10, Ch. 344, L. 2017; amd. Sec. 1, Ch. 371, L. 2017; amd. Sec. 14, Ch. 80, L. 2019; amd. Sec. 8, Ch. 611, L. 2023; amd. Sec. 6, Ch. 555, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 6, Ch. 555, L. 2025. Amendment effective May 8, 2025.

76-4-128. Repealed. Sec. 15, Ch. 280, L. 2001.

History: En. Sec. 152, Ch. 197, L. 1967; amd. Sec. 3, Ch. 509, L. 1973; amd. Sec. 3, Ch. 529, L. 1975; amd. Sec. 3, Ch. 557, L. 1977; R.C.M. 1947, 69-5005(5); amd. Sec. 2, Ch. 553, L. 1981.

76-4-129. Joint application form and concurrent review. The review required by this part and the provisions of chapter 3 may occur concurrently subject to the requirements of 76-4-115.

History: En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(11); amd. Sec. 3, Ch. 236, L. 1981; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 8, Ch. 419, L. 2021.

76-4-130. *(Temporary)* **Deviation from certificate of subdivision approval — expedited review.** (1) Except as provided in subsection (2), a person may not construct or use a facility that deviates from the certificate of subdivision approval until the reviewing authority has approved the deviation.

(2) (a) A person may deviate from the certificate of subdivision approval without approval by the reviewing authority if the deviation consists solely of connecting to municipal, county water and/or sewer district, or regional authority facilities in place of previously approved facilities. The department may require notification when a person connects to municipal, county water and/or sewer district, or regional authority facilities.

(b) A person qualifies for a 15-day expedited review under this part to deviate from the certificate of subdivision approval if the person intends to add an accessory dwelling unit as provided for in 76-2-215 to a parcel with existing public water and wastewater service that has capacity for the accessory dwelling unit. *(Terminates September 30, 2029—sec. 4, Ch. 619, L. 2025.)*

76-4-130. *(Effective October 1, 2029)* **Deviation from certificate of subdivision approval.** (1) Except as provided in subsection (2), a person may not construct or use a facility that deviates from the certificate of subdivision approval until the reviewing authority has approved the deviation.

(2) A person may deviate from the certificate of subdivision approval without approval by the reviewing authority if the deviation consists solely of connecting to municipal, county water and/or sewer district, or regional authority facilities in place of previously approved facilities. The department may require notification when a person connects to municipal, county water and/or sewer district, or regional authority facilities.

History: En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(9); amd. Sec. 15, Ch. 490, L. 1985; amd. Sec. 12, Ch. 280, L. 2001; amd. Sec. 15, Ch. 80, L. 2019; amd. Sec. 9, Ch. 419, L. 2021; amd. Sec. 2, Ch. 619, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 619, L. 2025. Amendment effective October 1, 2025, and terminates September 30, 2029.

76-4-131. Applicability of public water supply laws. An exclusion provided for in this part does not relieve any person of the duty to comply with the requirements of Title 75, chapter 6. An extension of a public water supply system or an extension of a public sewage system to serve a subdivision must be reviewed in accordance with the provisions of Title 75, chapter 6.

History: En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(6); amd. Sec. 13, Ch. 280, L. 2001; amd. Sec. 16, Ch. 80, L. 2019; amd. Sec. 10, Ch. 419, L. 2021.

76-4-132. Special revenue account — deposit and use of fees. (1) All fees collected by the department under 76-4-105 must be deposited in an account in the state special revenue fund.

(2) Funds in the account established in subsection (1) may be used only as provided in 76-4-105.

History: En. Sec. 2, Ch. 514, L. 1993; amd. Sec. 14, Ch. 280, L. 2001.

76-4-133. Installation inspection. A person who owns or controls a parcel of land that has been approved under this chapter for the installation of an individual, shared, or multiple-user sewage system shall:

(1) have the system inspected during installation by the local health officer, as defined in 50-1-101, or by the installer or other person designated by the local health officer; and

(2) file with the local board of health a certification by the inspector that the system has been installed in compliance with the certificate of subdivision approval and any conditions of approval.

History: En. Sec. 3, Ch. 280, L. 2001; amd. Sec. 12, Ch. 150, L. 2007; amd. Sec. 17, Ch. 80, L. 2019.

76-4-134. Owner request for review. The department may review any parcel of land submitted for review by the owner of the parcel to determine whether the parcel may be developed with water and wastewater systems and to provide adequate solid waste disposal and storm water management. Upon making the determinations, the department may issue a certificate of subdivision approval for the parcel.

History: En. Sec. 1, Ch. 279, L. 2009.

76-4-135. State regulations no more stringent than federal regulations or guidelines. (1) After April 14, 1995, except as provided in subsections (2) through (5) or unless required by state law, the department may not adopt a rule to implement this chapter that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The department may incorporate by reference comparable federal regulations or guidelines.

(2) The department may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if the department makes a written finding after a public hearing and public comment and based on evidence in the record that:

(a) the proposed state standard or requirement protects public health or the environment of the state; and

(b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the department's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.

(4) (a) A person affected by a rule of the department adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable federal regulations or guidelines may petition the department to review the rule. If the department determines that the rule is more stringent than comparable federal regulations or guidelines, the department shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The department may charge a petition filing fee in an amount not to exceed $250.

(b) A person may also petition the department for a rule review under subsection (4)(a) if the department adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted department rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1).

History: En. Sec. 3, Ch. 471, L. 1995.

76-4-136. Exemption from environmental review. The department is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when reviewing applications under this part for subdivisions.

History: En. Sec. 1, Ch. 354, L. 2023; amd. Sec. 4, Ch. 377, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 377, L. 2025. Amendment effective October 1, 2025.

Parts 2 through 9 reserved

Part 10
Penalties, Fees, and Interest

76-4-1001. Penalty factors. (1) In determining the amount of an administrative or civil penalty to which subsection (4) applies, the department of environmental quality or the district court, as appropriate, shall take into account the following factors:

(a) the nature, extent, and gravity of the violation;

(b) the circumstances of the violation;

(c) the violator's prior history of any violation, which:

(i) must be a violation of a requirement under the authority of the same chapter and part as the violation for which the penalty is being assessed;

(ii) must be documented in an administrative order or a judicial order or judgment issued within 3 years prior to the date of the occurrence of the violation for which the penalty is being assessed; and

(iii) may not, at the time that the penalty is being assessed, be undergoing or subject to administrative appeal or judicial review;

(d) the economic benefit or savings resulting from the violator's action;

(e) the violator's good faith and cooperation;

(f) the amounts voluntarily expended by the violator, beyond what is required by law or order, to address or mitigate the violation or impacts of the violation; and

(g) other matters that justice may require.

(2) After the amount of a penalty is determined under subsection (1), the department of environmental quality or the district court, as appropriate, may consider the violator's financial ability to pay the penalty and may institute a payment schedule or suspend all or a portion of the penalty.

(3) The department of environmental quality may accept a supplemental environmental project as mitigation for a portion of the penalty. For purposes of this section, a "supplemental environmental project" is an environmentally beneficial project that a violator agrees to undertake in settlement of an enforcement action but which the violator is not otherwise legally required to perform.

(4) This section applies to penalties assessed by the department of environmental quality or the district court under Title 75, chapters 2, 5, 6, 11, and 20; Title 75, chapter 10, parts 2, 4, 5, and 12; and Title 76, chapter 4.

(5) The department of environmental quality may adopt rules to implement this section.

History: En. Sec. 1, Ch. 487, L. 2005; amd. Sec. 78, Ch. 324, L. 2021.

76-4-1002. Collection of penalties, fees, late fees, and interest. (1) If the department of environmental quality is unable to collect penalties, fees, late fees, or interest assessed pursuant to the provisions of Title 75 or Title 76, chapter 4, the department of environmental quality may assign the debt to a collection service or transfer the debt to the department of revenue pursuant to Title 17, chapter 4, part 1.

(2) (a) The reasonable collection costs of a collection service, if approved by the department of environmental quality, or assistance costs charged the department of environmental quality by the department of revenue pursuant to 17-4-103(3) may be added to the debt for which collection is being sought.

(b) (i) All money collected by the department of revenue is subject to the provisions of 17-4-106.

(ii) All money collected by a collection service must be paid to the department of environmental quality and deposited in the general fund or the accounts specified in statute for the assessed penalties, fees, late fees, or interest, except that the collection service may retain those collection costs or, if the total debt is not collected, that portion of collection costs that are approved by the department.

History: En. Sec. 2, Ch. 487, L. 2005.

Part 11
Out-of-State Sales of In-State Subdivisions (Repealed)

76-4-1101. Repealed. Sec. 6, Ch. 170, L. 1999.

History: (1)En. Sec. 9, Ch. 191, L. 1963; Sec. 67-2109, R.C.M. 1947; (2) thru (4)En. Sec. 1, Ch. 191, L. 1963; amd. Sec. 321, Ch. 350, L. 1974; Sec. 67-2101, R.C.M. 1947; R.C.M. 1947, 67-2101, 67-2109; amd. Sec. 6, Ch. 497, L. 1979; amd. Sec. 3, Ch. 274, L. 1981.

76-4-1102. Repealed. Sec. 6, Ch. 170, L. 1999.

History: En. Sec. 2, Ch. 191, L. 1963; amd. Sec. 322, Ch. 350, L. 1974; R.C.M. 1947, 67-2102.

76-4-1103. Repealed. Sec. 6, Ch. 170, L. 1999.

History: En. Sec. 3, Ch. 191, L. 1963; amd. Sec. 323, Ch. 350, L. 1974; R.C.M. 1947, 67-2103(1).

76-4-1104. Repealed. Sec. 6, Ch. 170, L. 1999.

History: En. Sec. 3, Ch. 191, L. 1963; amd. Sec. 323, Ch. 350, L. 1974; R.C.M. 1947, 67-2103(2).

76-4-1105. Repealed. Sec. 6, Ch. 170, L. 1999.

History: En. Sec. 4, Ch. 191, L. 1963; R.C.M. 1947, 67-2104.

76-4-1106. Repealed. Sec. 6, Ch. 170, L. 1999.

History: En. Sec. 5, Ch. 191, L. 1963; amd. Sec. 324, Ch. 350, L. 1974; R.C.M. 1947, 67-2105.

76-4-1107. Repealed. Sec. 6, Ch. 170, L. 1999.

History: En. Sec. 6, Ch. 191, L. 1963; amd. Sec. 325, Ch. 350, L. 1974; R.C.M. 1947, 67-2106(part).

76-4-1108. Repealed. Sec. 6, Ch. 170, L. 1999.

History: En. Sec. 6, Ch. 191, L. 1963; amd. Sec. 325, Ch. 350, L. 1974; R.C.M. 1947, 67-2106(part); amd. Sec. 1, Ch. 277, L. 1983.

76-4-1109. Repealed. Sec. 6, Ch. 170, L. 1999.

History: En. Sec. 7, Ch. 191, L. 1963; amd. Sec. 326, Ch. 350, L. 1974; R.C.M. 1947, 67-2107.

76-4-1110. Repealed. Sec. 6, Ch. 170, L. 1999.

History: En. Sec. 13, Ch. 191, L. 1963; amd. Sec. 330, Ch. 350, L. 1974; R.C.M. 1947, 67-2113.

76-4-1111. Repealed. Sec. 6, Ch. 170, L. 1999.

History: En. Sec. 12, Ch. 191, L. 1963; amd. Sec. 329, Ch. 350, L. 1974; R.C.M. 1947, 67-2112.

76-4-1112. Repealed. Sec. 6, Ch. 170, L. 1999.

History: En. Sec. 11, Ch. 191, L. 1963; R.C.M. 1947, 67-2111.

76-4-1113. Repealed. Sec. 6, Ch. 170, L. 1999.

History: En. Sec. 10, Ch. 191, L. 1963; amd. Sec. 328, Ch. 350, L. 1974; R.C.M. 1947, 67-2110.

76-4-1114. Repealed. Sec. 6, Ch. 170, L. 1999.

History: En. Sec. 8, Ch. 191, L. 1963; amd. Sec. 327, Ch. 350, L. 1974; R.C.M. 1947, 67-2108.

76-4-1115. Repealed. Sec. 6, Ch. 170, L. 1999.

History: En. Sec. 16, Ch. 191, L. 1963; amd. Sec. 332, Ch. 350, L. 1974; R.C.M. 1947, 67-2116; amd. Sec. 12, Ch. 266, L. 1979.

76-4-1116. Repealed. Sec. 6, Ch. 170, L. 1999.

History: En. Sec. 14, Ch. 191, L. 1963; amd. Sec. 331, Ch. 350, L. 1974; R.C.M. 1947, 67-2114.

76-4-1117. Repealed. Sec. 6, Ch. 170, L. 1999.

History: En. Sec. 15, Ch. 191, L. 1963; R.C.M. 1947, 67-2115; amd. Sec. 13, Ch. 266, L. 1979.

Part 12
In-State Sales of Out-of-State Subdivisions
(Repealed)

76-4-1201. Repealed. Sec. 46, Ch. 481, L. 1997.
History: En. Sec. 20, Ch. 97, L. 1969; R.C.M. 1947, 67-2136.

76-4-1202. Repealed. Sec. 46, Ch. 481, L. 1997.
History: En. Sec. 1, Ch. 97, L. 1969; amd. Sec. 333, Ch. 350, L. 1974; R.C.M. 1947, 67-2117; amd. Sec. 7, Ch. 497, L. 1979; amd. Sec. 3, Ch. 274, L. 1981.

76-4-1203. Repealed. Sec. 46, Ch. 481, L. 1997.
History: En. Secs. 2, 10, Ch. 97, L. 1969; amd. Secs. 334, 340, Ch. 350, L. 1974; R.C.M. 1947, 67-2118(part), 67-2126(1); amd. Sec. 8, Ch. 497, L. 1979.

76-4-1204. Repealed. Sec. 46, Ch. 481, L. 1997.
History: En. Sec. 10, Ch. 97, L. 1969; amd. Sec. 340, Ch. 350, L. 1974; R.C.M. 1947, 67-2126(4).

76-4-1205. Repealed. Sec. 46, Ch. 481, L. 1997.
History: En. Sec. 10, Ch. 97, L. 1969; amd. Sec. 340, Ch. 350, L. 1974; R.C.M. 1947, 67-2126(6).

76-4-1206. Repealed. Sec. 46, Ch. 481, L. 1997.
History: En. Secs. 10, 11, Ch. 97, L. 1969; amd. Secs. 340, 341, Ch. 350, L. 1974; R.C.M. 1947, 67-2126(5)(b), 67-2127(1).

76-4-1207. Repealed. Sec. 46, Ch. 481, L. 1997.
History: En. Sec. 11, Ch. 97, L. 1969; amd. Sec. 341, Ch. 350, L. 1974; R.C.M. 1947, 67-2127(2), (3).

76-4-1208. Repealed. Sec. 46, Ch. 481, L. 1997.
History: En. Sec. 11, Ch. 97, L. 1969; amd. Sec. 341, Ch. 350, L. 1974; R.C.M. 1947, 67-2127(part).

76-4-1209. Repealed. Sec. 46, Ch. 481, L. 1997.
History: En. Sec. 11, Ch. 97, L. 1969; amd. Sec. 341, Ch. 350, L. 1974; R.C.M. 1947, 67-2127(part).

76-4-1210. Repealed. Sec. 46, Ch. 481, L. 1997.
History: En. Sec. 11, Ch. 97, L. 1969; amd. Sec. 341, Ch. 350, L. 1974; R.C.M. 1947, 67-2127(part).

76-4-1211. Repealed. Sec. 46, Ch. 481, L. 1997.
History: En. Sec. 2, Ch. 97, L. 1969; amd. Sec. 334, Ch. 350, L. 1974; R.C.M. 1947, 67-2118(part).

76-4-1212. Repealed. Sec. 46, Ch. 481, L. 1997.
History: En. Sec. 2, Ch. 97, L. 1969; amd. Sec. 334, Ch. 350, L. 1974; R.C.M. 1947, 67-2118(part); amd. Sec. 1, Ch. 277, L. 1983.

76-4-1213. Repealed. Sec. 46, Ch. 481, L. 1997.
History: En. Secs. 2, 10, Ch. 97, L. 1969; amd. Secs. 334, 340, Ch. 350, L. 1974; R.C.M. 1947, 67-2118(part), 67-2126(5)(c); amd. Sec. 1, Ch. 277, L. 1983.

76-4-1214 through 76-4-1220 reserved.

76-4-1221. Repealed. Sec. 46, Ch. 481, L. 1997.
History: En. Sec. 3, Ch. 97, L. 1969; R.C.M. 1947, 67-2119(part).

76-4-1222. Repealed. Sec. 46, Ch. 481, L. 1997.
History: En. Sec. 3, Ch. 97, L. 1969; R.C.M. 1947, 67-2119(part); amd. Sec. 8, Ch. 351, L. 1979.

76-4-1223. Repealed. Sec. 46, Ch. 481, L. 1997.
History: En. Sec. 3, Ch. 97, L. 1969; R.C.M. 1947, 67-2119(part).

76-4-1224. Repealed. Sec. 46, Ch. 481, L. 1997.
History: En. Sec. 3, Ch. 97, L. 1969; R.C.M. 1947, 67-2119(part).

76-4-1225. Repealed. Sec. 46, Ch. 481, L. 1997.
History: En. Sec. 10, Ch. 97, L. 1969; amd. Sec. 340, Ch. 350, L. 1974; R.C.M. 1947, 67-2126(7).

76-4-1226. Repealed. Sec. 46, Ch. 481, L. 1997.
History: En. Sec. 4, Ch. 97, L. 1969; R.C.M. 1947, 67-2120.

76-4-1227. Repealed. Sec. 46, Ch. 481, L. 1997.
History: En. Secs. 5, 10, Ch. 97, L. 1969; amd. Sec. 335, 340, Ch. 350, L. 1974; R.C.M. 1947, 67-2121(part), 67-2126(5)(a).

76-4-1228. Repealed. Sec. 46, Ch. 481, L. 1997.
History: En. Sec. 5, Ch. 97, L. 1969; amd. Sec. 335, Ch. 350, L. 1974; R.C.M. 1947, 67-2121(1)(b), (f), (g), (h), (i), (j), (k), (l).

76-4-1229. Repealed. Sec. 46, Ch. 481, L. 1997.
History: En. Sec. 5, Ch. 97, L. 1969; amd. Sec. 335, Ch. 350, L. 1974; R.C.M. 1947, 67-2121(1)(d), (e).

76-4-1230. Repealed. Sec. 46, Ch. 481, L. 1997.
History: En. Sec. 5, Ch. 97, L. 1969; amd. Sec. 335, Ch. 350, L. 1974; R.C.M. 1947, 67-2121(1)(a), (c), (m), (n), (o).

76-4-1231. Repealed. Sec. 46, Ch. 481, L. 1997.
History: En. Sec. 5, Ch. 97, L. 1969; amd. Sec. 335, Ch. 350, L. 1974; R.C.M. 1947, 67-2121(2).

76-4-1232. Repealed. Sec. 46, Ch. 481, L. 1997.
History: En. Sec. 5, Ch. 97, L. 1969; amd. Sec. 335, Ch. 350, L. 1974; R.C.M. 1947, 67-2121(3).

76-4-1233. Repealed. Sec. 46, Ch. 481, L. 1997.
History: En. Sec. 6, Ch. 97, L. 1969; amd. Sec. 336, Ch. 350, L. 1974; R.C.M. 1947, 67-2122(1).

76-4-1234. Repealed. Sec. 46, Ch. 481, L. 1997.
History: En. Secs. 6, 10, Ch. 97, L. 1969; amd. Secs. 336, 340, Ch. 350, L. 1974; R.C.M. 1947, 67-2122(2), 67-2126(2).

76-4-1235. Repealed. Sec. 46, Ch. 481, L. 1997.
History: En. Sec. 6, Ch. 97, L. 1969; amd. Sec. 336, Ch. 350, L. 1974; R.C.M. 1947, 67-2122(3).

76-4-1236. Repealed. Sec. 46, Ch. 481, L. 1997.
History: En. Sec. 7, Ch. 97, L. 1969; amd. Sec. 337, Ch. 350, L. 1974; R.C.M. 1947, 67-2123.

76-4-1237. Repealed. Sec. 46, Ch. 481, L. 1997.
History: En. Sec. 8, Ch. 97, L. 1969; amd. Sec. 1, Ch. 110, L. 1974; amd. Sec. 338, Ch. 350, L. 1974; R.C.M. 1947, 67-2124(part).

76-4-1238. Repealed. Sec. 46, Ch. 481, L. 1997.
History: En. Sec. 8, Ch. 97, L. 1969; amd. Sec. 1, Ch. 110, L. 1974; amd. Sec. 338, Ch. 350, L. 1974; R.C.M. 1947, 67-2124(part).

76-4-1239. Repealed. Sec. 46, Ch. 481, L. 1997.
History: En. Sec. 8, Ch. 97, L. 1969; amd. Sec. 1, Ch. 110, L. 1974; amd. Sec. 338, Ch. 350, L. 1974; R.C.M. 1947, 67-2124(4).

76-4-1240. Repealed. Sec. 46, Ch. 481, L. 1997.
History: En. Sec. 9, Ch. 97, L. 1969; amd. Sec. 339, Ch. 350, L. 1974; R.C.M. 1947, 67-2125.

76-4-1241. Repealed. Sec. 46, Ch. 481, L. 1997.
History: En. Sec. 12, Ch. 97, L. 1969; amd. Sec. 342, Ch. 350, L. 1974; R.C.M. 1947, 67-2128(1).

76-4-1242. Repealed. Sec. 46, Ch. 481, L. 1997.
History: En. Sec. 12, Ch. 97, L. 1969; amd. Sec. 342, Ch. 350, L. 1974; R.C.M. 1947, 67-2128(2).

76-4-1243. Repealed. Sec. 46, Ch. 481, L. 1997.
History: En. Sec. 13, Ch. 97, L. 1969; amd. Sec. 343, Ch. 350, L. 1974; amd. Sec. 55, Ch. 359, L. 1977; R.C.M. 1947, 67-2129.

76-4-1244. Repealed. Sec. 46, Ch. 481, L. 1997.
History: En. Sec. 10, Ch. 97, L. 1969; amd. Sec. 340, Ch. 350, L. 1974; R.C.M. 1947, 67-2126(3).

76-4-1245. Repealed. Sec. 46, Ch. 481, L. 1997.
History: En. Sec. 15, Ch. 97, L. 1969; R.C.M. 1947, 67-2131; amd. Sec. 14, Ch. 266, L. 1979.

76-4-1246. Repealed. Sec. 46, Ch. 481, L. 1997.
History: En. Sec. 18, Ch. 97, L. 1969; R.C.M. 1947, 67-2134.

76-4-1247. Repealed. Sec. 46, Ch. 481, L. 1997.
History: En. Sec. 16, Ch. 97, L. 1969; R.C.M. 1947, 67-2132(a), (b), (e).

76-4-1248. Repealed. Sec. 46, Ch. 481, L. 1997.
History: En. Sec. 16, Ch. 97, L. 1969; R.C.M. 1947, 67-2132(c), (d).

76-4-1249. Repealed. Sec. 46, Ch. 481, L. 1997.
History: En. Sec. 16, Ch. 97, L. 1969; R.C.M. 1947, 67-2132(f).

76-4-1250. Repealed. Sec. 46, Ch. 481, L. 1997.
History: En. Sec. 17, Ch. 97, L. 1969; R.C.M. 1947, 67-2133.

76-4-1251. Repealed. Sec. 46, Ch. 481, L. 1997.
History: En. Sec. 19, Ch. 97, L. 1969; amd. Sec. 344, Ch. 350, L. 1974; R.C.M. 1947, 67-2135.

CHAPTER 5
FLOOD PLAIN AND FLOODWAY MANAGEMENT

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Chapter Cross-References
Water rights, Art. IX, sec. 3, Mont. Const.
Flood control by water and sewer districts, 7-13-2218.
Flood Control Act of 1954 — distribution of revenue to counties, 17-3-231, 17-3-232.

Easements relating to flooding, 70-17-101.
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Renewable resource development program — flood control, 85-1-602.
Flood control by conservancy districts, 85-9-102.

Part 1
General Provisions

76-5-101. Findings. The people of the state of Montana find that:

(1) recurrent flooding of a portion of the state's land resources causes loss of life, damage to property, disruption of commerce and governmental services, and unsanitary conditions; all of which are detrimental to the health, safety, welfare, and property of the occupants of flooded lands and the people of this state; and

(2) the public interest necessitates management and regulation of flood-prone lands and waters in a manner consistent with sound land and water use management practices which will prevent and alleviate flooding threats to life and health and reduce private and public economic losses.

History: En. Sec. 1, Ch. 393, L. 1971; R.C.M. 1947, 89-3501.

76-5-102. Policy and purposes. (1) The policy and purposes of parts 1 through 4 of this chapter are to:

(a) guide development of the floodway areas of this state consistent with the enumerated findings;

(b) recognize the right and need of watercourses to periodically carry more than the normal flow of water;

(c) provide state coordination and technical assistance to local units in management of floodway areas;

(d) coordinate federal, state, and local management activities for floodway areas;

(e) encourage local governmental units to manage flood-prone lands, including the adoption, enforcement, and administration of land use regulations; and

(f) provide the department of natural resources and conservation with authority necessary to carry out a comprehensive floodway management program for the state.

(2) Specifically, it is the purpose of parts 1 through 4 to:

(a) restrict or prohibit uses that are dangerous to health or safety of property in times of flood or that cause increased flood heights or velocities;

(b) require that uses vulnerable to floods, including public facilities that serve the uses, be provided with flood protection at the time of initial construction;

(c) develop and provide information to identify lands that are unsuited for certain development purposes because of flood hazard;

(d) distinguish between the land use regulations applied to the designated floodway and those applied to that portion of the designated flood plain not contained within the designated floodway;

(e) apply more restrictive land use regulations within the designated floodway;

(f) ensure that regulations and minimum standards adopted under parts 1 through 4, insofar as possible, balance the greatest public good with the least private injury.

History: En. Sec. 2, Ch. 393, L. 1971; amd. Sec. 194, Ch. 253, L. 1974; amd. Sec. 1, Ch. 271, L. 1974; R.C.M. 1947, 89-3502; amd. Sec. 241, Ch. 418, L. 1995.

76-5-103. Definitions. As used in parts 1 through 4 of this chapter, unless the context otherwise requires, the following definitions apply:

(1) "Artificial obstruction" means any obstruction that is not a natural obstruction and includes any dam, wall, riprap, embankment, levee, dike, pile, abutment, projection, revetment, excavation, channel rectification, bridge, conduit, culvert, building, refuse, automobile body, fill, or other analogous structure or matter in, along, across, or projecting into any flood plain or floodway that may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by the water, or that is placed where the natural flow of the water would carry the same downstream to the damage or detriment of either life or property.

(2) "Channel" means the geographical area within either the natural or artificial banks of a watercourse or drainway.

(3) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(4) "Designated flood plain" means a flood plain whose limits have been designated pursuant to part 2 of this chapter.

(5) "Designated floodway" means a floodway whose limits have been designated pursuant to part 2 of this chapter.

(6) "Drainway" means any depression 2 feet or more below the surrounding land serving to give direction to a current of water less than 9 months of the year and having a bed and well-defined banks.

(7) "Establish" means construct, place, insert, or excavate.

(8) "Flood" means the water of any watercourse or drainway that is above the bank or outside the channel and banks of the watercourse or drainway.

(9) "Flood of 100-year frequency" means a flood magnitude expected to recur on the average of once every 100 years or a flood magnitude that has a 1% chance of occurring in any given year.

(10) "Flood plain" means the area adjoining the watercourse or drainway that would be covered by the floodwater of a flood of 100-year frequency, except for sheetflood areas that receive less than 1 foot of water per occurrence and are considered "zone B" or a "shaded X zone" by the federal emergency management agency.

(11) "Floodway" means the channel of a watercourse or drainway and those portions of the flood plain adjoining the channel that are reasonably required to carry and discharge the floodwater of any watercourse or drainway.

(12) "Natural obstruction" means any rock, tree, gravel, or analogous natural matter that is an obstruction and has been located within the flood plain or floodway by a nonhuman cause.

(13) "Owner" means any person who has dominion over, control of, or title to an obstruction.

(14) "Political subdivision" means any incorporated city or town or any county organized and having authority to adopt and enforce land use regulations.

(15) "Responsible political subdivision" means a political subdivision that has enacted land use regulations in accordance with parts 1 through 4.

(16) (a) "Watercourse" means any depression 2 feet or more below the surrounding land serving to give direction to a current of water at least 9 months of the year and having a bed and well-defined banks.

(b) Upon order of the department, the term also includes any particular depression that would not otherwise be within the definition of watercourse.

History: En. Sec. 3, Ch. 393, L. 1971; amd. Sec. 1, Ch. 294, L. 1973; amd. Sec. 195, Ch. 253, L. 1974; amd. Sec. 2, Ch. 271, L. 1974; R.C.M. 1947, 89-3503(part); amd. Sec. 1, Ch. 428, L. 1981; amd. Sec. 242, Ch. 418, L. 1995; amd. Sec. 1, Ch. 113, L. 2009; amd. Sec. 1, Ch. 124, L. 2009.

76-5-104. Presumption that depression is watercourse. In the event of doubt as to whether a depression is a watercourse or drainway, it shall be presumed to be a watercourse.

History: En. Sec. 3, Ch. 393, L. 1971; amd. Sec. 1, Ch. 294, L. 1973; amd. Sec. 195, Ch. 253, L. 1974; amd. Sec. 2, Ch. 271, L. 1974; R.C.M. 1947, 89-3503(part).

76-5-105. Authority to enter and investigate lands or waters. (1) The department or the responsible political subdivision may make reasonable entry upon any lands and waters in the state for the purpose of making an investigation, survey, removal, or repair contemplated by parts 1 through 4 of this chapter. Unless written consent is obtained, however, the department or the responsible political subdivision shall provide written notice of its entry by personal delivery to the owner, owner's agent, lessee, or lessee's agent whose lands will be entered. If none of these persons can be found, the department or the responsible political subdivision shall affix a copy of the notice to one or more conspicuous places on the property.

(2) An investigation of a natural or artificial obstruction or nonconforming use shall be made by the department or the responsible political subdivision either on its own initiative, on the written request of three titleholders of land abutting the watercourse or drainway involved, or on the written request of a political subdivision. Upon the request of an owner, owner's agent, lessee, or lessee's agent whose lands will be entered to undertake the investigation, the

department or the responsible political subdivision shall release the names and addresses of the persons or political subdivision requesting the investigation.

History: En. Sec. 9, Ch. 393, L. 1971; amd. Sec. 201, Ch. 253, L. 1974; amd. Sec. 8, Ch. 271, L. 1974; R.C.M. 1947, 89-3509; amd. Sec. 1, Ch. 382, L. 1985.

76-5-106. Exemption for small drainage area. Parts 1 through 4 of this chapter do not extend to any obstruction in the flood plain or floodway of a watercourse or drainway where the drainage area above the watercourse or drainway, either within or outside the state, is less than 25 square miles in extent unless a particular watercourse or drainway is expressly declared to be within the coverage of parts 1 through 4 by order of the department.

History: En. Sec. 10, Ch. 393, L. 1971; amd. Sec. 9, Ch. 271, L. 1974; R.C.M. 1947, 89-3510; amd. Sec. 243, Ch. 418, L. 1995.

76-5-107. Federal supremacy. Parts 1 through 4 do not interfere with the right of the United States to regulate interstate commerce or the navigable waters of the United States.

History: En. Sec. 14, Ch. 393, L. 1971; amd. Sec. 204, Ch. 253, L. 1974; amd. Sec. 11, Ch. 271, L. 1974; amd. Sec. 4, Ch. 73, L. 1977; R.C.M. 1947, 89-3514(part).

76-5-108. Permit construed as added requirement. The granting of a permit under parts 1 through 4 of this chapter does not affect any other type of approval required by any other statute or ordinance of the state, of any political subdivision, or of the United States but is an added requirement.

History: En. Sec. 14, Ch. 393, L. 1971; amd. Sec. 204, Ch. 253, L. 1974; amd. Sec. 11, Ch. 271, L. 1974; amd. Sec. 4, Ch. 73, L. 1977; R.C.M. 1947, 89-3514(part).

76-5-109. Other legal remedies preserved — immunity. (1) The grant or denial of a permit does not have an effect on a remedy of a person at law or in equity.

(2) When it is shown that there is a wrongful failure to comply with parts 1 through 4 of this chapter, there is a rebuttable presumption that the obstruction was the proximate cause of the flooding of the land of a person bringing suit.

(3) The use of any one of the remedies or powers given to the department in parts 1 through 4 is not a bar to the exercise of any other remedy or power given by parts 1 through 4.

(4) An action for damages sustained because of injury caused by an obstruction for which a permit has been granted under parts 1 through 4 may not be brought against the state or the department.

History: (1), (2), (4)En. Sec. 14, Ch. 393, L. 1971; amd. Sec. 204, Ch. 253, L. 1974; amd. Sec. 11, Ch. 271, L. 1974; amd. Sec. 4, Ch. 73, L. 1977; Sec. 89-3514, R.C.M. 1947; (3)En. Sec. 15, Ch. 393, L. 1971; amd. Sec. 205, Ch. 253, L. 1974; Sec. 89-3515, R.C.M. 1947; R.C.M. 1947, 89-3514(part), 89-3515; amd. Sec. 244, Ch. 418, L. 1995.

76-5-110. Penalties for violation. Any person who violates 76-5-401 through 76-5-404 shall be guilty of a misdemeanor and shall upon conviction thereof be fined not more than $100 or be imprisoned in the county jail for not more than 10 days or be both so fined and imprisoned. Each day's continuance of a violation shall be deemed a separate and distinct offense.

History: En. Sec. 13, Ch. 393, L. 1971; R.C.M. 1947, 89-3513.

Part 2
Role of State Agencies

76-5-201. Program for delineation of flood plains and floodways. (1) The department shall initiate a comprehensive program for the delineation of designated flood plains and designated floodways for each watercourse and drainway in the state. It shall make a study relating to the acquiring of flood data and may enter into arrangements with the United States geological survey, the United States army corps of engineers, or any other state or federal agency for the acquisition of data.

(2) Before the department establishes by order a designated flood plain or a designated floodway, the department shall consult with the affected political subdivisions. Consultation must include but is not limited to the following:

(a) specifically requesting that the political subdivisions submit pertinent data concerning flood hazards, including flooding experiences, plans to avoid potential hazards, estimates of economic impacts of flooding on the community, both historical and prospective, and other data that is considered appropriate;

(b) notifying local officials, including members of the county commission, city council, and planning board, of the progress of surveys, studies, and investigations and of proposed findings, along with information concerning data and methods employed in reaching conclusions; and

(c) encouraging local dissemination of information concerning surveys, studies, and investigations so that interested persons will have an opportunity to bring relevant data to the attention of the department.

(3) Nothing in this part precludes a political subdivision from designating by ordinance or resolution, without prior state designation, flood plains and floodways as designated by the United States federal emergency management agency and as necessary for compliance with the national flood insurance program if the department determines the designation is in compliance with parts 1 through 4 of this chapter.

History: En. Sec. 4, Ch. 393, L. 1971; amd. Sec. 2, Ch. 294, L. 1973; amd. Sec. 196, Ch. 253, L. 1974; amd. Sec. 3, Ch. 271, L. 1974; amd. Sec. 1, Ch. 262, L. 1977; R.C.M. 1947, 89-3504(1); amd. Sec. 245, Ch. 418, L. 1995; amd. Sec. 2, Ch. 113, L. 2009.

76-5-202. Designation of flood plains and floodways. (1) When sufficient data has been acquired by the department, the department shall establish, by order after a public hearing, the designated flood plain within which a political subdivision may establish land use regulation.

(2) When sufficient data has been acquired, the department shall establish, by order after a public hearing, the designated floodway within which a political subdivision may establish land use regulation.

(3) These designations must be based upon reasonable hydrological certainty. Designations made according to a flood hazard boundary map prepared by the federal emergency management agency have a rebuttable presumption of reasonable hydrological certainty.

(4) The department shall record all designated flood plains or designated floodways in the office of the county clerk and recorder of each county in which those flood plains or floodways are found.

History: En. Sec. 4, Ch. 393, L. 1971; amd. Sec. 2, Ch. 294, L. 1973; amd. Sec. 196, Ch. 253, L. 1974; amd. Sec. 3, Ch. 271, L. 1974; amd. Sec. 1, Ch. 262, L. 1977; R.C.M. 1947, 89-3504(part); amd. Sec. 1, Ch. 160, L. 1987; amd. Sec. 246, Ch. 418, L. 1995.

76-5-203. Alteration of flood plains or floodways. The department may alter the flood plains or floodways at any later time, by order after a public hearing, if a reevaluation of the then available flood data warrants it.

History: En. Sec. 4, Ch. 393, L. 1971; amd. Sec. 2, Ch. 294, L. 1973; amd. Sec. 196, Ch. 253, L. 1974; amd. Sec. 3, Ch. 271, L. 1974; amd. Sec. 1, Ch. 262, L. 1977; R.C.M. 1947, 89-3504(part); amd. Sec. 247, Ch. 418, L. 1995.

76-5-204. What constitutes notice. Notice of a hearing or order of the department establishing or altering the flood plains or floodways must be given by publishing the notice once each week for 3 consecutive weeks in a legal newspaper published or of general circulation in the area involved. The last publication of the notice may not be less than 10 days prior to the date set for the hearing or the effective date of the order.

History: En. Sec. 4, Ch. 393, L. 1971; amd. Sec. 2, Ch. 294, L. 1973; amd. Sec. 196, Ch. 253, L. 1974; amd. Sec. 3, Ch. 271, L. 1974; amd. Sec. 1, Ch. 262, L. 1977; R.C.M. 1947, 89-3504(part); amd. Sec. 248, Ch. 418, L. 1995.

76-5-205. Furnishing of material to local governments. (1) When the designated flood plain or the designated floodway has been established, the department shall furnish this data to officials of the political subdivision having jurisdiction over those areas, together with a map outlining the areas involved, a copy of parts 1 through 4 of this chapter, adopted rules of the department, and suggested minimum standards adopted by the department.

(2) These standards and rules must reflect gradations in flood hazard based on criteria as outlined in 76-5-406. In adopting these standards and rules, the department shall consider local input from the affected political subdivisions.

History: En. Sec. 4, Ch. 393, L. 1971; amd. Sec. 2, Ch. 294, L. 1973; amd. Sec. 196, Ch. 253, L. 1974; amd. Sec. 3, Ch. 271, L. 1974; amd. Sec. 1, Ch. 262, L. 1977; R.C.M. 1947, 89-3504(part); amd. Sec. 249, Ch. 418, L. 1995.

76-5-206. Repealed. Sec. 3, Ch. 23, L. 2011.

History: En. Sec. 8, Ch. 393, L. 1971; amd. Sec. 5, Ch. 294, L. 1973; amd. Sec. 200, Ch. 253, L. 974; amd. Sec. 7, Ch. 271, L. 1974; R.C.M. 1947, 89-3508; amd. Sec. 250, Ch. 418, L. 1995.

76-5-207. Repealed. Sec. 3, Ch. 23, L. 2011.

History: En. Sec. 12, Ch. 393, L. 1971; amd. Sec. 203, Ch. 253, L. 1974; R.C.M. 1947, 89-3512.

76-5-208. Orders and rules. (1) The department may adopt orders and rules to implement parts 1 through 4 of this chapter. All orders and rules must be on file at the offices of the department and in the office of the county clerk and recorder of each county affected by the order or rule.

(2) In addition to any requirement imposed by 76-5-202 through 76-5-205, the department shall provide notice by mail to the titleholder of land adjacent to a watercourse or drainway that would be specifically affected by a proposed order. The notice must be provided at least 10 days prior to a hearing, if one is required, or at least 10 days prior to the effective date of the order if a hearing is not required.

History: En. Sec. 11, Ch. 393, L. 1971; amd. Sec. 202, Ch. 253, L. 1974; amd. Sec. 10, Ch. 271, L. 1974; R.C.M. 1947, 89-3511(part); amd. Sec. 251, Ch. 418, L. 1995; amd. Sec. 1, Ch. 23, L. 2011.

Cross-References

Adoption and publication of rules under Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

76-5-209. Appeal from order. (1) A person aggrieved by any order of the department issued under parts 1 through 4 of this chapter may appeal from the order to a court of competent jurisdiction within 30 days after the order's effective date. Service of notice of the appeal must be made upon the department.

(2) If an appeal is taken, enforcement of the order is stayed pending the outcome of the appeal.

History: En. Sec. 11, Ch. 393, L. 1971; amd. Sec. 202, Ch. 253, L. 1974; amd. Sec. 10, Ch. 271, L. 1974; R.C.M. 1947, 89-3511(part); amd. Sec. 252, Ch. 418, L. 1995.

Cross-References

Contested cases under Montana Administrative Procedure Act, Title 2, ch. 4, part 6.

Part 3
Role of Local Government

Part Cross-References

Flood Control Act of 1954 — distribution of revenue to counties, 17-3-231, 17-3-232.

76-5-301. Land use regulations. (1) Upon transmittal of the flood plain information to officials of a political subdivision, the political subdivision has 6 months from the date of transmittal to adopt land use regulations that meet or exceed the minimum standards of the department. The regulations may include, for the purposes of flood plain management only, flood plain management regulations within sheetflood areas as determined by the federal emergency management agency.

(2) If within the 6-month period the political subdivision has failed to adopt the land use regulations, the department shall enforce the minimum standards within the designated flood plain or the designated floodway as established by the department under 76-5-202 through 76-5-205, and an artificial obstruction or nonconforming use may not be established by any person within the designated flood plain or the designated floodway unless specifically authorized by the department.

(3) A political subdivision that has failed to adopt land use regulations that meet or exceed the minimum standards of the department within the 6-month period may subsequently adopt regulations, and if approved by the department, the regulations are effective within the designated flood plain or floodway and must be administered and enforced by the political subdivision.

(4) When necessary for compliance with federal flood insurance requirements, the department may shorten the 6-month period upon notification to the political subdivision and publication of a notice of the revised period in a newspaper of general circulation in the affected area once a week for 3 consecutive weeks.

History: En. Sec. 4, Ch. 393, L. 1971; amd. Sec. 2, Ch. 294, L. 1973; amd. Sec. 196, Ch. 253, L. 1974; amd. Sec. 3, Ch. 271, L. 1974; amd. Sec. 1, Ch. 262, L. 1977; R.C.M. 1947, 89-3504(3) thru (5); amd. Sec. 1, Ch. 74, L. 1983; amd. Sec. 253, Ch. 418, L. 1995.

76-5-302. Substitution of local control for state permit system. (1) If a political subdivision enacts, in harmony with the purposes of parts 1 through 4 of this chapter,

permit issuance ordinances, regulations, or resolutions and land use ordinances, regulations, or resolutions that meet or exceed the minimum standards of the department and if the administrative and enforcement procedures established for those ordinances, regulations, or resolutions are found acceptable by the department, a permit from the department is not required.

(2) However, if the department determines that there is a failure by a political subdivision to comply with the intent, purposes, and provisions of parts 1 through 4 and the minimum standards adopted under parts 1 through 4, the powers of the political subdivision may be suspended after hearing and the minimum standards adopted by the department must be enforced by the department until the department determines that the political subdivision will comply.

History: En. Sec. 14, Ch. 393, L. 1971; amd. Sec. 204, Ch. 253, L. 1974; amd. Sec. 11, Ch. 271, L. 1974; amd. Sec. 4, Ch. 73, L. 1977; R.C.M. 1947, 89-3514(part); amd. Sec. 254, Ch. 418, L. 1995.

Part 4
Use of Flood Plains and Floodways

Part Cross-References

Easements relating to flooding, 70-17-101.

76-5-401. Permissible open-space uses. The following open-space uses are permitted within the designated floodway to the extent that they are not prohibited by any other ordinance or statute and provided they do not require structures other than portable structures, fill, or permanent storage of materials or equipment:

(1) agricultural uses;

(2) industrial-commercial uses such as loading areas, parking areas, or emergency landing strips;

(3) private and public recreational uses such as golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife management and natural areas, alternative livestock ranches, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, or hiking and horseback riding trails;

(4) forestry, including processing of forest products with portable equipment;

(5) residential uses such as lawns, gardens, parking areas, and play areas;

(6) excavations subject to the issuance of a permit under 76-5-405 and 76-5-406.

History: En. Sec. 6, Ch. 393, L. 1971; amd. Sec. 4, Ch. 294, L. 1973; amd. Sec. 198, Ch. 253, L. 1974; amd. Sec. 5, Ch. 271, L. 1974; R.C.M. 1947, 89-3506(2); amd. Sec. 68, Ch. 7, L. 2001.

Cross-References

Recreational use of flood control channel prohibited, 23-2-301, 23-2-302.

76-5-402. Permissible uses within flood plain but outside floodway. Permits must be granted for the following uses within that portion of the flood plain not contained within the designated floodway to the extent that they are not prohibited by any other ordinance, regulation, or statute:

(1) any use permitted in the designated floodway;

(2) structures, including but not limited to residential, commercial, and industrial structures, provided that:

(a) the structures meet the minimum standards adopted by the department;

(b) residential structures are constructed so that the lowest floor elevation, including basements, is 2 feet above the 100-year flood elevation;

(c) commercial and industrial structures are either constructed as specified in subsection (2)(b) or are adequately floodproofed up to an elevation no lower than 2 feet above the 100-year flood elevation. The floodproofing must be in accordance with the minimum standards adopted by the department.

History: En. Sec. 6, Ch. 393, L. 1971; amd. Sec. 4, Ch. 294, L. 1973; amd. Sec. 198, Ch. 253, L. 1974; amd. Sec. 5, Ch. 271, L. 1974; R.C.M. 1947, 89-3506(3); amd. Sec. 255, Ch. 418, L. 1995; amd. Sec. 2, Ch. 124, L. 2009.

76-5-403. Prohibited uses within floodway. The following nonconforming uses shall be prohibited within the designated floodway:

(1) a building for living purposes or place of assembly or permanent use by human beings;

(2) a structure or excavation that will cause water to be diverted from the established floodway, cause erosion, obstruct the natural flow of water, or reduce the carrying capacity of the floodway;

(3) the construction or permanent storage of an object subject to flotation or movement during flood level periods.

History: En. Sec. 6, Ch. 393, L. 1971; amd. Sec. 4, Ch. 294, L. 1973; amd. Sec. 198, Ch. 253, L. 1974; amd. Sec. 5, Ch. 271, L. 1974; R.C.M. 1947, 89-3506(4).

Cross-References

Recreational use of flood control channel prohibited, 23-2-301, 23-2-302.

76-5-404. Artificial obstructions and nonconforming uses. (1) An artificial obstruction or nonconforming use in a designated flood plain or designated floodway enforced under 76-5-301(1) and (2) and not exempt under 76-5-401 through 76-5-403 or subsection (2) or (3) of this section is a public nuisance unless a permit has been obtained for the artificial obstruction or nonconforming use from the department or the responsible political subdivision.

(2) It is unlawful for a person to establish an artificial obstruction or nonconforming use within a designated flood plain or a designated floodway without a permit from the department or the responsible political subdivision.

(3) (a) Parts 1 through 4 of this chapter do not affect any existing artificial obstruction or nonconforming use established in the designated flood plain or designated floodway before the land use regulations adopted by the political subdivision are effective or before the department has enforced a designated flood plain or a designated floodway under 76-5-301(1) and (2).

(b) However, a person may not make nor may an owner allow alterations of an artificial obstruction or nonconforming use within a designated flood plain or a designated floodway whether the obstruction proposed for alteration was located in the flood plain or floodway before or after July 1, 1971, except upon express written approval of the department or the responsible political subdivision. Maintenance of an obstruction is not an alteration.

History: En. Secs. 5, 6, Ch. 393, L. 1971; amd. Secs. 3, 4, Ch. 294, L. 1973; amd. Secs. 197, 198, Ch. 253, L. 1974; amd. Secs. 4, 5, Ch. 271, L. 1974; R.C.M. 1947, 89-3505, 89-3506(1); amd. Sec. 256, Ch. 418, L. 1995.

76-5-405. Variance for obstruction or nonconforming use. (1) The department or the responsible political subdivision may issue permits for the establishment or alteration of artificial obstructions and nonconforming uses that would otherwise violate 76-5-401 through 76-5-404. The application for the permit must be submitted to the department or the responsible political subdivision and contain the information that the department requires, including complete maps, plans, profiles, and specifications of the obstruction or use and watercourse or drainway.

(2) Permits for obstructions or uses to be established in the designated flood plain or designated floodway of watercourses must be approved or denied within a reasonable time by the department or the responsible political subdivision. Permits for obstructions or uses in the designated flood plains or designated floodways are conclusively considered to have been granted 60 days after the receipt of the application by the department or the responsible political subdivision or after a time that the department or the responsible political subdivision specifies, unless the department or the responsible political subdivision notifies the applicant that the permit is denied. The responsible political subdivision shall send to the department a copy of each permit granted pursuant to 76-5-406 and this section.

(3) The department or the responsible political subdivision may issue the permit with reasonable conditions. The permitted obstruction or use must be maintained in compliance with the permit.

History: En. Sec. 7, Ch. 393, L. 1971; amd. Sec. 199, Ch. 253, L. 1974; amd. Sec. 6, Ch. 271, L. 1974; R.C.M. 1947, 89-3507(part); amd. Sec. 257, Ch. 418, L. 1995; amd. Sec. 2, Ch. 23, L. 2011.

76-5-406. Criteria to be considered in connection with variance request. In passing upon the application, the department or the responsible political subdivision shall consider in accordance with the minimum standards established by the department:

(1) the danger to life and property by water that may be backed up or diverted by the obstruction or use;

(2) the danger that the obstruction or use will be swept downstream to the injury of others;

(3) the availability of alternate locations;

(4) the construction or alteration of the obstruction or use in such a manner as to lessen the danger;

(5) the permanence of the obstruction or use;

(6) the anticipated development in the foreseeable future of the area that may be affected by the obstruction or use; and

(7) other factors in harmony with the purpose of parts 1 through 4 of this chapter.

History: En. Sec. 7, Ch. 393, L. 1971; amd. Sec. 199, Ch. 253, L. 1974; amd. Sec. 6, Ch. 271, L. 1974; R.C.M. 1947, 89-3507(part); amd. Sec. 258, Ch. 418, L. 1995.

Parts 5 through 10 reserved

Part 11
Water Conservation and Flood Control Projects

Part Cross-References

Flood Control Act of 1954 — distribution of revenue to counties, 17-3-231, 17-3-232.

Eminent domain for flooding from construction of dam, 70-30-104.

Flood control function of conservancy districts, 85-9-102.

76-5-1101. Water conservation and flood control projects authorized. (1) Cities, towns, or counties, through their councils, boards of county commissioners, or other governing body, are hereby empowered, either individually or jointly, to engage or participate in the establishment of water conservation and flood control projects within the limits of such city, town, or county:

(a) for the protection or reclamation of property situated therein from floods or high waters and to protect property therein from the effects of floodwater; and

(b) for the conservation, development, storage, distribution, drainage, and utilization of water for purposes beneficial to the district.

(2) Purposes beneficial to the district include but are not limited to industrial and municipal water supply, recreation and wildlife, irrigation, streamflow stabilization, household and domestic use, and pollution abatement whenever the establishment of such a water conservation and flood control system shall, in the judgment of the city council, board of county commissioners, or other governing body, be conducive to public convenience and welfare.

History: En. Sec. 1, Ch. 272, L. 1965; amd. Sec. 1, Ch. 284, L. 1967; R.C.M. 1947, 89-3301(part).

76-5-1102. Types of projects. Such cities, towns, or counties in accordance with the provisions of this part, individually, jointly, or severally or in cooperation with the federal or state government or any department or agency thereof and with each other, may deepen, widen, straighten, alter, change, divert, or otherwise improve the watercourses within or without their limits by constructing levees, dikes, embankments, structures, impounding reservoirs, or conduits and improve, widen, and establish streets, alleys, and boulevards across and adjacent to the abandoned or new channel or conduit and provide for the payment of the cost and maintenance of such project or projects under the terms of this part.

History: En. Sec. 1, Ch. 272, L. 1965; amd. Sec. 1, Ch. 284, L. 1967; R.C.M. 1947, 89-3301(part).

76-5-1103. Water conservation and flood control activities declared public purpose. Such water conservation and flood control activities and their establishment, construction, operation, and maintenance as authorized by this part are declared to be for the protection of the tax base of the city, town, or county; for the protection of public roads, lands, and improvements; for the protection of the public health, sanitation, and safety; and for improvement of the general welfare.

History: En. Sec. 2, Ch. 272, L. 1965; amd. Sec. 2, Ch. 284, L. 1967; R.C.M. 1947, 89-3302.

76-5-1104. Construction of part. (1) This part and each section thereof shall be construed as granting additional power without limiting the power already existing in cities, towns, and counties.

(2) The provisions of this part and the methods of organization of water conservation and flood control projects are hereby declared to be an alternative method to any other method proposed by any law now in existence or hereafter enacted for the creation of such projects, and it is hereby declared that no provision hereof shall be amended or repealed by implication or

otherwise as being in conflict with any existing law or future enactment unless specifically so declared by the legislature.

History: (1)En. Sec. 13, Ch. 272, L. 1965; Sec. 89-3313, R.C.M. 1947; (2)En. Sec. 12, Ch. 284, L. 1967; Sec. 89-3314, R.C.M. 1947; R.C.M. 1947, 89-3313, 89-3314.

76-5-1105. Division of work into parts. Whenever any city, town, or county has begun a water conservation or flood control system, or both, under this part, the council, board, or other governing body shall have the power to divide the work into parts, sections, or districts; to omit parts of said work; and to contract for any part or section separately and proceed therewith the same as if the entire work or improvements were contracted for, done, or made.

History: En. Sec. 11, Ch. 272, L. 1965; amd. Sec. 11, Ch. 284, L. 1967; R.C.M. 1947, 89-3311.

76-5-1106. Requirements to change project boundaries — election. The boundaries of a project once established may not be extended without approval by a majority of the electors residing in the area proposed to be annexed. The election must be held in accordance with the provisions of Title 13, chapter 1, part 5.

History: En. Sec. 1, Ch. 272, L. 1965; amd. Sec. 1, Ch. 284, L. 1967; R.C.M. 1947, 89-3301(part); amd. Sec. 238, Ch. 49, L. 2015.

76-5-1107. Direction and construction responsibility of state or federal government — local role. This part contemplates that the actual direction of the project and the doing of the work in connection therewith is assumed by either the state or the federal government and the city, town, or county provides and assumes the cost of necessary right-of-way over and above such contributions in that regard as the federal government may choose to make. Under such limitation, all appropriate portions of this part shall apply.

History: En. Sec. 6, Ch. 272, L. 1965; amd. Sec. 5, Ch. 284, L. 1967; R.C.M. 1947, 89-3306.

76-5-1108. Acquisition of property. (1) Cities, towns, and counties may acquire by gift, purchase, or condemnation pursuant to Title 70, chapter 30, private property within the limits of the project that may be necessary to carry into effect the provisions of this part and to provide an outlet for the watercourses, either natural or artificial. Watercourses may be deepened, widened, straightened, altered, changed, diverted, or otherwise improved under the provisions of this part. Property rights that may be acquired include the right to cross railroad right-of-way and property and highway right-of-way and property so as not to impair the previous public use.

(2) All applicable provisions of Title 70, chapter 30, apply to the condemnation of property under this section.

History: En. Sec. 3, Ch. 272, L. 1965; amd. Sec. 3, Ch. 284, L. 1967; R.C.M. 1947, 89-3303; amd. Sec. 92, Ch. 125, L. 2001.

Cross-References

Eminent domain, Art. II, sec. 29, Mont. Const.; Title 70, ch. 30.

76-5-1109. Contracts for use of railroads and highways. A city, town, or county may contract with a railroad company or with the department of transportation for the use of railroad or highway rights-of-way and embankments and other railroad or highway property which can be utilized by the city, town, or county for the purpose of water conservation or flood control or protection as part of its water conservation or flood control system, or both, for a period not exceeding 99 years.

History: En. Sec. 10, Ch. 272, L. 1965; amd. Sec. 10, Ch. 284, L. 1967; amd. Sec. 207, Ch. 316, L. 1974; R.C.M. 1947, 89-3310; amd. Sec. 3, Ch. 512, L. 1991.

76-5-1110. Cooperation with governmental, public, and private agencies. (1) Cities, towns, and counties may in accordance with the provisions of this part:

(a) accept funds and property or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding the construction and maintenance of water conservation and flood control projects; and

(b) cooperate and contract with the state or federal government or any department or agency thereof in furnishing assurances and meeting local cooperation requirements of any project involving control, conservation, and use of water.

(2) Cities, towns, and counties may also enter into agreement with the federal government to maintain levees, dikes, or other construction and to do all other acts required by the federal government in maintaining the work when completed.

History: En. Secs. 4, 7, Ch. 272, L. 1965; amd. Secs. 4, 6, Ch. 284, L. 1967; R.C.M. 1947, 89-3304, 89-3307(part).

76-5-1111. Apportionment of costs. (1) The cost of all right-of-way acquired by purchase or condemnation pursuant to Title 70, chapter 30, together with any other property rights that may be required in furtherance of projects under this part, may be borne by the city, town, or county.

(2) The work of actual construction and the cost of construction may be borne by the federal government.

History: En. Sec. 5, Ch. 272, L. 1965; R.C.M. 1947, 89-3305; amd. Sec. 93, Ch. 125, L. 2001.

76-5-1112. Sources of funds for cost of acquiring right-of-way and other costs. (1) The council, board, or governing body shall have power to allocate a portion of the street or road fund, as the case may be, for the purpose of acquiring right-of-way or the operation and maintenance of completed projects.

(2) Cities, towns, and counties in furtherance of such water conservation and flood control projects may accept contributions to enable them to pay for necessary right-of-way.

(3) The council, board of county commissioners, or other governing body shall also have the authority to receive and accept appropriations and contributions from any source of either money or property or other things of value to be held, used, and applied for the purposes provided in this part.

History: (1)En. Sec. 8, Ch. 272, L. 1965; amd. Sec. 7, Ch. 284, L. 1967; Sec. 89-3308, R.C.M. 1947; (2)En. Sec. 7, Ch. 272, L. 1965; amd. Sec. 6, Ch. 284, L. 1967; Sec. 89-3307, R.C.M. 1947; (3)En. Sec. 9, Ch. 284, L. 1967; Sec. 89-3309.1, R.C.M. 1947; R.C.M. 1947, 89-3307(part), 89-3308, 89-3309.1(part).

76-5-1113. Special assessments for operation and maintenance authorized. (1) Any city, town, or county that shall establish a water conservation or flood control system, or both, pursuant to this part may for the purpose of providing funds for the operation and maintenance thereof levy an annual special assessment against all real property in the area benefiting from such system.

(2) Such special assessments for the operation and maintenance of any system authorized by this part shall be levied as are other special improvement levies as required by law.

History: En. Sec. 9, Ch. 272, L. 1965; amd. Sec. 8, Ch. 284, L. 1967; R.C.M. 1947, 89-3309(part).

Cross-References

Special improvement district assessments, Title 7, ch. 12, part 41.

76-5-1114. Determination of assessment. (1) The special assessment shall be:

(a) levied against each lot or parcel of land in the benefited area for that portion of the money required which its area bears to the total area of all of the lands to be assessed; or

(b) at the option of the governing body of the city, town, or county, as the case may be, based upon the taxable valuation, as stated in the last-completed county assessment roll, of the lots or parcels of land, exclusive of improvements thereon, within said benefited area; in which case each lot or parcel of land to be assessed shall be assessed with that part of the amount of money required which its taxable valuation bears to the total taxable valuation of all of the lands to be assessed.

(2) However, where the benefited area lies in more than one county or lies both within a county and also a city or town, the same method of assessment shall be used for each governing body.

History: En. Sec. 9, Ch. 272, L. 1965; amd. Sec. 8, Ch. 284, L. 1967; R.C.M. 1947, 89-3309(part).

76-5-1115. Fees and charges authorized. Cities, towns, and counties may for the purpose of providing funds for the operation and maintenance of completed projects fix, maintain, and collect fees, rents, tolls, and other charges for services rendered or facilities provided.

History: En. Sec. 9, Ch. 284, L. 1967; R.C.M. 1947, 89-3309.1(part).

76-5-1116. Determination of fees and charges. (1) In fixing the rate, fee, toll, or rent for water furnished for household use, domestic use, irrigation use, industrial use, and municipal use and for water used for streamflow stabilization, the governing body shall charge a fee sufficient to pay the proportionate share of the repairs, maintenance, and operating expenses as the use bears in economic value to the total economic value of the total use of the facilities of the project or projects. The economic value is to be determined by the governing body.

(2) For the benefits received by areas within the boundaries of the project or projects for flood prevention, flood control, and pollution abatement, the governing body shall determine a reasonable valuation or charge. The valuation or charge must be certified by the governing body to the county commissioners prior to the time general taxes are levied and assessed. Subject to 15-10-420, the county commissioners shall levy a special assessment as provided for in 76-5-1113 and 76-5-1114 against the area or areas sufficient to provide revenue for the repairs, maintenance, and operating expenses of the project.

(3) For recreation use the governing body shall first determine the share of the costs of operation, repairs, and depreciation to be charged against recreation uses and from this figure shall subtract the estimated amount of fees and tolls collected for recreation uses. The deficiency, if any, must be certified to the county commissioners, and subject to 15-10-420, special assessments must be levied by the county commissioners in the manner provided in this section.

History: En. Sec. 9, Ch. 284, L. 1967; R.C.M. 1947, 89-3309.1(part); amd. Sec. 144, Ch. 584, L. 1999.

76-5-1117. Bonds authorized — procedure. Cities, towns, and counties are authorized to contract indebtedness and to issue special improvement district or rural improvement district bonds to provide funds for the payment of the cost of improvements contemplated by this part by following the procedures established for the issuance of such bonds under the provisions of Title 7, chapter 12, part 42, as to cities and towns and Title 7, chapter 12, part 21, as to counties. Payment and security for the bonds shall be provided by following the following procedures:

(1) Tax assessments for the payment of the bonds shall be levied in accordance with Title 7, chapter 12, parts 41 and 42, or Title 7, chapter 12, part 21, as to cities and counties, respectively, or 76-5-1114(1).

(2) A revolving fund, to be pledged for the security of the bonds, must be established pursuant to the provisions of Title 7, chapter 12, part 42, as to cities and towns, and Title 7, chapter 12, part 21, as to counties, by the governing body authorizing the issuance of the bonds.

History: En. Sec. 12, Ch. 272, L. 1965; amd. Sec. 1, Ch. 239, L. 1971; R.C.M. 1947, 89-3312; amd. Sec. 15, Ch. 266, L. 1979; amd. Sec. 1, Ch. 209, L. 1981.

CHAPTER 6
OPEN SPACES

Part 1 — General Provisions

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Chapter Cross-References

Agricultural appraisal, Title 15, ch. 7, part 2.
State forest lands — deferral of management prohibited, 77-5-116.

Part 1
General Provisions

76-6-101. Short title. This chapter may be cited as the "Open-Space Land and Voluntary Conservation Easement Act".

History: En. Sec. 1, Ch. 337, L. 1969; amd. Sec. 1, Ch. 489, L. 1975; R.C.M. 1947, 62-601.

76-6-102. Intent, findings, and policy. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Open-Space Land and Voluntary Conservation Easement Act. It is the legislature's intent that the requirements of this chapter provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) The legislature finds that:

(a) the rapid growth and spread of urban development are creating critical problems of service and finance for the state and local governments;

(b) the present and future rapid population growth in urban areas is creating severe problems of urban and suburban living;

(c) this population spread and its attendant development are disrupting and altering the remaining natural areas, biotic communities, and geological and geographical formations and thereby providing the potential for the destruction of scientific, educational, aesthetic, and ecological values;

(d) the present and future rapid population spread throughout the state of Montana into its open spaces is creating serious problems of lack of open space and overcrowding of the land;

(e) to lessen congestion and to preserve natural, ecological, geographical, and geological elements, the provision and preservation of open-space lands are necessary to secure park, recreational, historic, and scenic areas and to conserve the land, its biotic communities, its natural resources, and its geological and geographical elements in their natural state;

(f) the acquisition or designation of interests and rights in real property by certain qualifying private organizations and by public bodies to provide or preserve open-space land is essential to the solution of these problems, the accomplishment of these purposes, and the health and welfare of the citizens of the state;

(g) the exercise of authority to acquire or designate interests and rights in real property to provide or preserve open-space land and the expenditure of public funds for these purposes would be for a public purpose; and

(h) the statutory provision enabling certain qualifying private organizations to acquire interests and rights in real property to provide or preserve open-space land is in the public interest.

History: En. Sec. 2, Ch. 337, L. 1969; amd. Sec. 2, Ch. 489, L. 1975; R.C.M. 1947, 62-602(part); amd. Sec. 25, Ch. 361, L. 2003.

76-6-103. Purposes. In accordance with the findings in 76-6-102, the legislature states that the purposes of this chapter are to:

(1) authorize and enable public bodies and certain qualifying private organizations voluntarily to provide for the preservation of native plants or animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interest;

(2) provide for the preservation of other significant open-space land anywhere in the state either in perpetuity or for a term of years; and

(3) encourage private participation in such a program by establishing the policy to be utilized in determining the property tax to be levied upon the real property which is subject to the provisions of this chapter.

History: En. Sec. 2, Ch. 337, L. 1969; amd. Sec. 2, Ch. 489, L. 1975; R.C.M. 1947, 62-602(part).

76-6-104. Definitions. The following terms whenever used or referred to in this chapter shall have the following meanings unless a different meaning is clearly indicated by the context:

(1) "Comprehensive planning" means planning for development and shall include:

(a) preparation of general physical plans with respect to the pattern and intensity of land use and the provision of public facilities, including transportation facilities, together with long-range fiscal plans for such development as a guide for long-range development;

(b) programming and financing plans for capital improvements;

(c) coordination of all related plans and planned activities at both the intragovernmental and intergovernmental levels; and

(d) preparation of regulatory and administrative measures in support of the foregoing.

(2) "Conservation easement" means an easement or restriction, running with the land and assignable, whereby an owner of land voluntarily relinquishes to the holder of such easement or restriction any or all rights to construct improvements upon the land or to substantially alter the natural character of the land or to permit the construction of improvements upon the land or the substantial alteration of the natural character of the land, except as this right is expressly reserved in the instruments evidencing the easement or restriction.

(3) "Open-space land" means any land which is provided or preserved for:

(a) park or recreational purposes;

(b) conservation of land or other natural resources;

(c) historic or scenic purposes; or

(d) assisting in the shaping of the character, direction, and timing of community development.

(4) "Public body" means the state, counties, cities, towns, and other municipalities.

(5) "Qualified private organization" means a private organization:

(a) competent to own interests in real property;

(b) which qualifies and holds a general tax exemption under the federal Internal Revenue Code, section 501(c); and

(c) whose organizational purposes are designed to further the purposes of this chapter.

(6) "Urban area" means any area which is urban in character, including surrounding areas which form an economic and socially related region, taking into consideration such factors as present and future population trends and patterns of urban growth, location of transportation facilities and systems, and distribution of industrial, commercial, residential, governmental, institutional, and other activities.

History: En. Sec. 3, Ch. 337, L. 1969; amd. Sec. 3, Ch. 489, L. 1975; R.C.M. 1947, 62-603(part).

76-6-105. Construction of chapter. (1) To the extent that the provisions of this chapter are inconsistent with the provisions of any other law, the provisions of this chapter are controlling. The powers conferred by this chapter are in addition and supplemental to the powers conferred by any other law.

(2) This chapter may not be construed to imply that any easement, covenant, condition, or restriction that does not have the benefit of this chapter is not enforceable based on any provisions of this chapter. This chapter does not diminish the powers granted by any general or special law to acquire by purchase, gift, eminent domain pursuant to Title 70, chapter 30, or otherwise and to use land for public purposes.

History: (1)En. Sec. 9, Ch. 337, L. 1969; Sec. 62-609, R.C.M. 1947; (2)En. 62-618 by Sec. 14, Ch. 489, L. 1975; Sec. 62-618, R.C.M. 1947; R.C.M. 1947, 62-609(part), 62-618; amd. Sec. 279, Ch. 42, L. 1997; amd. Sec. 94, Ch. 125, L. 2001.

76-6-106. Acquisition and designation of real property by public body. To carry out the purposes of this chapter, any public body may:

(1) acquire by purchase, gift, devise, bequest, or grant title to or any interests or rights in real property, including land and water, that will provide a means for the preservation or provision of significant open-space land or the preservation of native plants or animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interest, or both;

(2) designate any real property, including land and water, in which it has an interest to be retained and used for the preservation and provision of significant open-space land or the preservation of native plants or animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interests, or both.

History: En. Sec. 4, Ch. 337, L. 1969; amd. Sec. 4, Ch. 489, L. 1975; R.C.M. 1947, 62-604(part).

76-6-107. Conversion or diversion of open-space land. (1) Open-space land, the title to or interest or right in which has been acquired under this chapter, may not be converted or diverted from open-space land use unless the conversion or diversion is:

(a) necessary to the public interest;

(b) not in conflict with the program of comprehensive planning for the area; and

(c) permitted by the conditions imposed at the time of the creation of the conservation easement, in the terms of the acquisition agreement, or by the governing body resolution.

(2) Other real property of at least equal fair market value and of as nearly as feasible equivalent usefulness and location for use as open-space land must be substituted within a reasonable period not exceeding 3 years for any real property converted or diverted from open-space land use. Property substituted is subject to the provisions of this chapter.

History: En. Sec. 5, Ch. 337, L. 1969; amd. Sec. 5, Ch. 489, L. 1975; R.C.M. 1947, 62-605(1); amd. Sec. 1, Ch. 88, L. 2005.

76-6-108. Conveyance or lease of open-space lands. A grantee may convey or lease any real property it has acquired or which has been designated for the purposes of this chapter. The conveyance or lease shall be subject to contractual arrangements that will preserve the property as open-space land and which are consistent with the express terms and conditions of the grant unless the property is to be converted or diverted from open-space land use in accordance with the provisions of 76-6-107.

History: En. Sec. 5, Ch. 337, L. 1969; amd. Sec. 5, Ch. 489, L. 1975; R.C.M. 1947, 62-605(2).

76-6-109. Powers of public bodies — county real property acquisition procedure maintained. (1) A public body has the power to carry out the purposes and provisions of this chapter, including the following powers in addition to others granted by this chapter:

(a) to borrow funds and make expenditures necessary to carry out the purposes of this chapter;

(b) to advance or accept advances of public funds;

(c) to apply for and accept and use grants and any other assistance from the federal government and any other public or private sources, to give security as may be required, to enter into and carry out contracts or agreements in connection with the assistance, and to include in any contract for assistance from the federal government conditions imposed pursuant to federal laws as the public body may consider reasonable and appropriate and that are not inconsistent with the purposes of this chapter;

(d) to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this chapter;

(e) in connection with the real property acquired or designated for the purposes of this chapter, to provide or to arrange or contract for the provision, construction, maintenance, operation, or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities, or other facilities or structures that may be necessary to the provision, preservation, maintenance, and management of the property as open-space land;

(f) to insure or provide for the insurance of any real or personal property or operations of the public body against any risks or hazards, including the power to pay premiums on the insurance;

(g) to demolish or dispose of any structures or facilities that may be detrimental to or inconsistent with the use of real property as open-space land; and

(h) to exercise any of its functions and powers under this chapter jointly or cooperatively with public bodies of one or more states, if they are authorized by state law, and with one or more public bodies of this state and to enter into agreements for joint or cooperative action.

(2) For the purposes of this chapter, the state, a city, town, or other municipality, or a county may:

(a) appropriate funds;

(b) subject to 15-10-420, levy taxes and assessments according to existing codes and statutes;

(c) issue and sell its general obligation bonds in the manner and within the limitations prescribed by the applicable laws of the state, subject to subsection (3); and

(d) exercise its powers under this chapter through a board or commission or through the office or officers that its governing body by resolution determines or as the governor determines in the case of the state.

(3) Open space levies and property taxes pledged to the payment of the principal and interest on general obligation bonds issued by a city, town, other municipality, or county pursuant to this chapter may not be levied against the following property:

(a) agricultural land eligible for valuation, assessment, and taxation as agricultural land under 15-7-202;

(b) forest land as defined in 15-44-102;

(c) all agricultural improvements on agricultural land referred to in subsection (3)(a);

(d) all noncommercial improvements on forest land referred to in subsection (3)(b); and

(e) agricultural implements and equipment described in 15-6-138(1)(a).

(4) This chapter does not supersede the provisions of Title 7, chapter 8, parts 22 and 25.

History: En. Sec. 6, Ch. 337, L. 1969; R.C.M. 1947, 62-606; amd. Sec. 145, Ch. 584, L. 1999; amd. Sec. 1, Ch. 463, L. 2001; amd. Sec. 194, Ch. 574, L. 2001; amd. Sec. 123, Ch. 114, L. 2003; amd. Sec. 2, Ch. 430, L. 2003; amd. Sec. 16, Ch. 255, L. 2017; amd. Sec. 1, Ch. 653, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 653, L. 2025. Amendment effective October 1, 2025.

Applicability: Section 2, Ch. 653, L. 2025, provided: "[This act] applies to all open space levies and bonds, regardless of the approval date, and to property tax years beginning on or after January 1, 2026."

76-6-110. Authorization and funding for planning commission. (1) The state, counties, cities, towns, or other municipalities in an urban area, acting jointly or in cooperation, are authorized to perform comprehensive planning for the urban area and to establish and maintain a planning commission for this purpose and related planning activities.

(2) Funds may be appropriated and made available for the comprehensive planning. Financial or other assistance from the federal government and any other public or private sources may be accepted and utilized for the planning.

History: En. Sec. 7, Ch. 337, L. 1969; R.C.M. 1947, 62-607.

Part 2
Conservation Easements

Part Cross-References

Servitudes and easements, Title 70, ch. 17, part 1.

76-6-201. Conservation easements in general. (1) Where a public body acquires under this chapter an interest in land less than fee, this acquisition shall be by conservation easement.

(2) A conservation easement may be applied to urban or nonurban land.

History: En. Secs. 3, 4, Ch. 337, L. 1969; amd. Secs. 3, 4, Ch. 489, L. 1975; R.C.M. 1947, 62-603(part), 62-604(part).

76-6-202. Duration of conservation easements. Conservation easements may be granted either in perpetuity or for a term of years. If granted for a term of years, that term may not be less than 15 years. An easement granted for a term of years may be renewed for a term of 15 or more years upon the execution of a new granting instrument by the parties.

History: En. Sec. 3, Ch. 337, L. 1969; amd. Sec. 3, Ch. 489, L. 1975; R.C.M. 1947, 62-603(part).

76-6-203. Types of permissible easements. Easements or restrictions under this chapter may prohibit or limit any or all of the following:

(1) structures—construction or placing of buildings, camping trailers, housetrailers, mobile homes, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;

(2) landfill—dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste, or unsightly or offensive materials;

(3) vegetation—removal or destruction of trees, shrubs, or other vegetation;

(4) loam, gravel, etc.—excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance;

(5) surface use—surface use except for such purposes permitting the land or water area to remain predominantly in its existing condition;

(6) acts detrimental to conservation—activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat and preservation;

(7) subdivision of land—subdivision of land as defined in 76-3-103 and 76-3-104;

(8) other acts—other acts or uses detrimental to such retention of land or water areas in their existing conditions.

History: En. 62-610 by Sec. 7, Ch. 489, L. 1975; R.C.M. 1947, 62-610; amd. Sec. 16, Ch. 266, L. 1979; amd. Sec. 12, Ch. 379, L. 2013.

76-6-204. Acquisition of conservation easements by qualified private organizations. Any qualified private organization may acquire by a conservation easement, by purchase, or by gift, devise, bequest, or grant title to any interest or interests in rights in real property, including land and water, that will provide a means for the preservation or provision of permanent significant open-space land and/or the preservation of native plants or animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interest.

History: En. 62-611 by Sec. 8, Ch. 489, L. 1975; R.C.M. 1947, 62-611.

76-6-205. Assignability of easements. For the purposes of this chapter, all conservation easements shall be assignable unless the instrument of conveyance or ownership expressly stipulates otherwise. No conservation easement shall be unenforceable on account of the benefit being assignable or being assigned to any other government body or private organization unless such assignment has violated the express terms of the instrument of conveyance or ownership. The assignees must be qualified under the terms of this chapter to hold a conservation easement.

History: En. 62-613 by Sec. 10, Ch. 489, L. 1975; R.C.M. 1947, 62-613.

76-6-206. Review by local planning authority. In order to minimize conflict with local comprehensive planning, all conservation easements shall be subject to review prior to recording by the appropriate local planning authority for the county within which the land lies. It shall be the responsibility of the entity acquiring the conservation easement to present the proposed conveyance of the conservation easement to the appropriate local planning authority. The local planning authority shall have 90 days from receipt of the proposed conveyance within which to review and to comment upon the relationship of the proposed conveyance to comprehensive planning for the area. Such comments will not be binding on the proposed grantor or grantee but shall be merely advisory in nature. The proposed conveyance may be recorded after comments have been received from the local planning authority or the local planning authority has indicated in writing it will have no comments or 90 days have elapsed, whichever occurs first.

History: En. 62-614 by Sec. 11, Ch. 489, L. 1975; R.C.M. 1947, 62-614.

Cross-References

Local planning and zoning, Title 76, ch. 2.

76-6-207. Recording and description of easement. (1) All conservation easements must be recorded in the county where the land lies so as to effect the land's title in the manner of other conveyances of interest in land and must describe the land subject to the conservation easement by adequate legal description or by reference to a recorded plat showing its boundaries.

(2) (a) The county clerk and recorder shall, upon recording, place a copy of the conservation easement in a separate file within the office of the county clerk and recorder.

(b) The county clerk and recorder shall provide a copy of the conservation easement to the department of revenue office in that county within 30 days of the receipt of the original conservation easement.

History: En. 62-615 by Sec. 12, Ch. 489, L. 1975; R.C.M. 1947, 62-615; amd. Sec. 3, Ch. 352, L. 2007.

Cross-References

Procedure to record documents, 7-4-2617.

76-6-208. Taxation of property subject to conservation easement. (1) Assessments made for taxation on property subject to a conservation easement either in perpetuity or for a term of years, where a public body or a qualifying private organization holds the conservation easement, shall be determined on the basis of the restricted purposes for which the property may be used. The minimum assessed value for land subject to an easement conveyed under this chapter may not be less than the actual assessed value of such land in calendar year 1973.

Any land subject to such easement may not be classified into a class affording a lesser assessed valuation solely by reason of the creation of the easement. The value of the interest held by a public body or qualifying private organization shall be exempt from property taxation.

(2) Expiration of an easement granted for a term of years shall not result in a reassessment of the land for property tax purposes if the easement is renewed and the granting instrument reflecting the renewed easement is executed and properly filed not later than 15 days after the date of expiration.

History: En. Sec. 8, Ch. 337, L. 1969; amd. Sec. 6, Ch. 489, L. 1975; R.C.M. 1947, 62-608.

Cross-References

Agricultural appraisal, Title 15, ch. 7, part 2.

Assessment procedure, Title 15, ch. 8.

76-6-209. Easements to run with the land. The provisions of 70-17-202 and 70-17-203(1) and (2) notwithstanding, for the purposes of this chapter, all conservation easements, whether held by public bodies or qualifying private organizations, shall be considered to run with the land, whether or not such fact is stipulated in the instrument of conveyance or ownership.

History: En. 62-612 by Sec. 9, Ch. 489, L. 1975; R.C.M. 1947, 62-612(part).

76-6-210. Enforcement. (1) Conservation easements may be enforced by injunction or proceedings in equity. Representatives of the grantee of the conservation easement shall be entitled to enter the land in a reasonable manner and at reasonable times to assure compliance.

(2) No conservation easement shall be unenforceable on account of lack of privity of estate or contract or lack of benefit to particular land or on account of such conservation easement not being an appurtenant easement or because such easement is an easement in gross.

History: En. 62-612, 62-616 by Secs. 9, 13, Ch. 489, L. 1975; R.C.M. 1947, 62-612(part), 62-616.

Cross-References

Injunctions, Title 27, ch. 19.

76-6-211. Who may enforce easement. (1) The owner of any estate in a dominant tenement or the occupant of such tenement may maintain an action for the enforcement of an easement attached thereto.

(2) Public bodies holding conservation easements shall enforce the provisions of these easements.

History: (1)En. Sec. 1258, Civ. C. 1895; re-en. Sec. 4515, Rev. C. 1907; re-en. Sec. 6757, R.C.M. 1921; Cal. Civ. C. Sec. 809; Field Civ. C. Sec. 253; re-en. Sec. 6757, R.C.M. 1935; Sec. 67-609, R.C.M. 1947; redes. 62-617 by Sec. 15, Ch. 489, L. 1975; Sec. 62-617, R.C.M. 1947; (2)En. Sec. 4, Ch. 337, L. 1969; amd. Sec. 4, Ch. 489, L. 1975; Sec. 62-604, R.C.M. 1947; R.C.M. 1947, 62-604(part), 62-617.

76-6-212. Additional reporting procedures — coordination of information collection, transfer, and accessibility. (1) A public body or qualified private organization holding a conservation easement before October 1, 2007, shall mail or electronically transfer a copy of that conservation easement to the department of revenue within 6 months of October 1, 2007.

(2) The department of revenue shall review conservation easement agreements collected pursuant to 76-6-207 and subsection (1) of this section and record the:

(a) legal description of the conservation easement as it relates to the established property boundaries identified in the conservation easement agreement;

(b) approximate acreage as identified in the conservation easement agreement;

(c) date of the conservation easement agreement;

(d) book and page or document number as provided for in 7-4-2617; and

(e) name of the conservation easement grantee.

(3) (a) The department of revenue shall transfer conservation easement information collected pursuant to 76-6-207 and subsections (1) and (2) of this section to the state library.

(b) The department of revenue shall coordinate with the state library to develop procedures regarding the collection and transfer of conservation easement information between the two agencies.

(c) The state library shall convert conservation easement information received from the department of revenue to a digital format for land information purposes authorized in Title 90, chapter 1, part 4, that can be accessed through the state library's website.

(d) The state library shall incorporate the conservation easement data into appropriate databases developed or maintained by the Montana natural heritage program for the purposes of Title 90, chapter 15.

History: En. Sec. 5, Ch. 352, L. 2007; amd. Sec. 3, Ch. 175, L. 2013.

CHAPTER 7
ENVIRONMENTAL CONTROL EASEMENT ACT

Part 1 — General Provisions

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Part 1
General Provisions

76-7-101. Short title. This chapter may be cited as the "Environmental Control Easement Act".

History: En. Sec. 1, Ch. 503, L. 1999.

76-7-102. Intent, findings, and purpose. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Environmental Control Easement Act. It is the legislature's intent that the requirements of this chapter provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) The legislature finds that:

(a) numerous sites throughout the state contain or may contain hazardous wastes or substances that may threaten the public health, safety, or welfare or the environment if certain uses are permitted on these sites or if certain activities are not performed on these sites;

(b) at some sites, protection of the public health, safety, or welfare or the environment may be enhanced by the application and enforcement of certain restrictions on the future use of the site or requirements for performance of certain activities;

(c) the creation of an enforceable easement mechanism for imposing restrictions on the use of a site and requiring performance of operations and maintenance activities may help protect the public health, safety, and welfare and the environment by:

(i) preventing or minimizing the exposure of the public to hazardous wastes or substances;

(ii) preventing the disturbance of important features of remediation work and remedial technologies employed at the site;

(iii) ensuring that the presence of hazardous wastes or substances and the features of remediation work and remedial technologies are properly considered in the future use or development of a site; or

(iv) requiring the performance of certain activities or the prohibition or limitation of certain activities, with respect to the site; and

(d) the expenditure of public funds for the acquisition or designation of interests and rights in real property to protect the public health, safety, and welfare and the environment is in the public's interest.

(3) It is the purpose of this chapter to authorize and enable federal public entities, other public bodies, and certain qualifying private organizations to provide for:

(a) the monitoring and protection of environmental control sites to ensure that those sites are not used for purposes that may threaten the public health, safety, or welfare or the environment;

(b) a process of reviewing the need for specialized construction, development, use, and safety measures if the owner or user of an environmental control site proposes a new use for which any contamination might present a risk to the public health, safety, or welfare or the environment; and

(c) a mechanism for prohibiting or limiting certain activities or requiring certain activities on an environmental control site to enhance protection of the public health, safety, or welfare or the environment.

History: En. Sec. 2, Ch. 503, L. 1999; amd. Sec. 26, Ch. 361, L. 2003.

76-7-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Department" means the department of environmental quality provided for in 2-15-3501.

(2) "Environmental control easement" or "easement" means an easement created under this chapter that burdens an environmental control site, that runs with the land, and that is binding on the owner and subsequent owners, lessees, and other users of the land. The easement may require the relinquishment of some or all rights to use the land or its surface or subsurface or the water in, upon, or under the land to the extent provided in the instrument granting the easement.

(3) "Environmental control site" or "site" means any site, including the surface and subsurface of the land and the surface and subsurface resources in, upon, or under the land, including, without limitation, minerals and water that may contain hazardous wastes or substances or that may require remediation, reclamation, or restoration pursuant to federal, state, or local law or regulation.

(4) "Federal public entity" means the United States of America, the United States environmental protection agency, or any other federal government agency or authority and its successors or assigns.

(5) "Governmental order" means a consent decree, judgment, decision, order, agreement, or other requirement authorized or imposed by or under any federal or state law affecting an environmental control site.

(6) "Hazardous wastes or substances" means those hazardous or toxic substances, wastes, materials, pollutants, or contaminants that are subject to regulation by federal, state, or local environmental protection laws or that are defined pursuant to 75-10-403, 75-10-602, and 75-10-702.

(7) "Public body" means the state, counties, cities, towns, and other municipalities.

(8) "Qualified private organization" means a private organization:

(a) competent to own interests in real property;

(b) that qualifies and holds a general tax exemption under the federal Internal Revenue Code, 26 U.S.C. 501(c); and

(c) whose organizational purposes are designed to further the purposes of this chapter.

History: En. Sec. 3, Ch. 503, L. 1999.

76-7-104. Acquisition of interests in environmental control sites. A public body may acquire by grant, title to, interests in, or rights in environmental control sites, including environmental control easements.

History: En. Sec. 4, Ch. 503, L. 1999.

76-7-105. Conversion or diversion of environmental control sites. An environmental control site in which an environmental control easement has been granted pursuant to this chapter may not be converted or diverted from purposes specified in the easement instrument or released from any restriction, limitation, or requirement specified in the easement instrument unless the conversion, diversion, or release is:

(1) protective of the public health, safety, and welfare and the environment as determined by the department or the United States environmental protection agency that initially approved the easement;

(2) permitted by the criteria for modification or termination imposed at the time of the creation of the easement; and

(3) approved in writing by the easement holder and any other person named in the easement instrument from whom approval is required.

History: En. Sec. 5, Ch. 503, L. 1999.

76-7-106. Conveyance or lease of environmental control sites. (1) A grantee of an environmental control easement acquired under this chapter may not convey or assign any of the easement rights that the grantee has acquired except to a federal public entity, a public body, or a qualified private organization authorized to hold environmental control easements under 76-7-204.

(2) A grantee of a conveyance pursuant to subsection (1) shall assume the responsibility for enforcing the environmental control easement as specified in the easement instrument and in 76-7-211.

History: En. Sec. 6, Ch. 503, L. 1999.

76-7-107. Public body powers. In connection with environmental control sites acquired or designated as environmental control easements for the purposes of this chapter, a public body may provide, arrange, or contract for the monitoring of the environmental control sites as necessary to ensure that the environmental control sites are being used only for the purposes permitted by the terms of the environmental control easement and are not being used in a manner that is prohibited or restricted by the terms of the environmental control easement.

History: En. Sec. 7, Ch. 503, L. 1999.

Part 2
Environmental Control Easements

76-7-201. Creation and approval of environmental control easements. (1) An environmental control easement may be created under this chapter only if the department or the United States environmental protection agency has approved the creation of an environmental control easement at an environmental control site to protect public health, safety, or welfare or the environment.

(2) An owner or an authorized representative of the owner of an environmental control site may apply for approval of a proposed environmental control easement to the department or the United States environmental protection agency.

(3) An owner or an authorized representative of the owner of an environmental control site that applies to the department for approval shall complete an environmental control easement application developed by the department.

(4) Upon receiving a completed application and following public notice, the department shall allow for a 30-day public comment period. Notice of the public comment period shall be published in a newspaper of general circulation in the area of the proposed environmental control easement.

(5) Following the 30-day public comment period, the department shall promptly review the application and either approve the application or provide the applicant with a written statement of the reasons for the department's disapproval.

(6) If the application is disapproved for reasons that may be addressed by modification of the easement instrument or by changes to the proposed transaction, the applicant, in consultation with the department, may modify the proposed environmental control easement or the proposed transaction in a manner necessary to obtain department approval and resubmit the application for the department's approval.

(7) The department's approval must be evidenced by execution of the instrument creating the environmental control easement, the execution of a written statement evidencing the approval in recordable form, or any other method that reasonably substantiates the required approval.

History: En. Sec. 8, Ch. 503, L. 1999.

76-7-202. Duration of environmental control easements. An environmental control easement may be granted either in perpetuity or for a term of years. An environmental control easement may not be approved for a term of years unless it includes provisions that ensure that public health, safety, and welfare and the environment are protected beyond the expiration of the easement.

History: En. Sec. 9, Ch. 503, L. 1999.

76-7-203. Permissible easements. (1) An environmental control easement under this chapter may prohibit or limit the following activities or uses:

(a) constructing or placing of buildings, camping trailers, housetrailers, mobile homes, roads, or other structures on or above the ground;

(b) dumping or placing of soil, debris, or other wastes or substances as landfill or dumping or placing of trash, waste, or unsightly or offensive materials;

(c) removing or destroying trees, shrubs, or other vegetation or planting or allowing growth of specific types of vegetation, such as crops for human or animal consumption or undesirable vegetation;

(d) excavating, dredging, or removing of gravel, soil, rock, or other materials or substances;

(e) using the surface of the land in a particular manner, such as for agricultural, residential, commercial, or industrial uses;

(f) subdividing the land, as described in 76-3-103 and 76-3-104;

(g) disturbing soil caps, soil surfaces, berms, drainage structures, or other structures or other activities that may cause erosion or migration of hazardous wastes or substances at or from the environmental control site;

(h) drilling or using water wells for potable or nonpotable purposes;

(i) other activities or uses detrimental to or interfering with the remediation or cleanup of the environmental control site or detrimental to the preservation of remedial structures, measures, or technologies employed at the environmental control site; and

(j) other activities or uses that may result in a risk or threat to the public health, safety, or welfare or the environment.

(2) An environmental control easement under this chapter may include or require the following:

(a) maintenance of environmental control site remedial structures or other remedial measures, such as soil surfaces, soil caps, berms, fences, or drainage improvements;

(b) rights in the holder of the easement or others for continuing access to the site as necessary to implement, operate, maintain, and monitor remedial work and technologies, including operation and maintenance, and to ensure implementation and enforcement of the requirements, restrictions, and limitations specified in the easement instrument;

(c) prompt notification to the holder of the easement or others of transfers of all or any portion of an environmental control site or interest in the site or of any proposed changes in land use at the site;

(d) compliance with all requirements of any applicable governmental order;

(e) arrangements for indemnification or for reimbursement of any costs and expenses of the easement holder or others or other methods of allocating costs and expenses for remedial actions, operations and maintenance, or other activities on the environmental control site or with respect to the site;

(f) other obligations that any federal public entity or other public body having jurisdiction over the property determines are necessary to implement, ensure noninterference with, or ensure the protection of remedial work performed under a governmental order; or

(g) other obligations that are necessary or advisable to reduce or eliminate risks or threats to the public health, safety, or welfare or the environment at environmental control sites.

History: En. Sec. 10, Ch. 503, L. 1999; amd. Sec. 13, Ch. 379, L. 2013.

76-7-204. Environmental control easement conveyances. (1) The designated grantee of an environmental control easement granted under this chapter is one or more of the following entities:

(a) a federal public entity;

(b) the state of Montana, acting by and through the department or any other state agency;

(c) any other public body having jurisdiction over the environmental control site; or

(d) a qualified private organization.

(2) A grantee's acceptance of the easement interest and related obligations must be evidenced by the grantee's execution of the instrument creating the environmental control easement.

(3) Prior to or contemporaneously with the conveyance of an environmental control easement to a designated grantee, the environmental control site owner shall:

(a) obtain documents demonstrating that every person or entity holding an interest in the environmental control site or any part of the site, including without limitation each mortgagee, lienholder, lessee, and encumbrancer, irrevocably subordinates the entity's interest to the environmental control easement;

(b) record the documents required under subsection (3)(a) in the appropriate county; and

(c) submit those documents required under subsection (3)(a) to the designated grantee.

(4) An environmental control easement may not be separated from the land and survives foreclosure of a mortgage, lien, or other encumbrance, as well as tax lien sales and the issuance of a tax deed.

History: En. Sec. 11, Ch. 503, L. 1999; amd. Sec. 108, Ch. 2, L. 2009.

76-7-205. Qualified private organizations. If the grantee or holder of an environmental control easement is a qualified private organization, then the organization has the following additional obligations:

(1) The organization shall provide to the state or federal agency that approved the environmental control easement pursuant to 76-7-201 an annual report on or before April 30 of each year providing a description of actions taken to monitor the environmental control site, the status of compliance with the environmental control easement, and any other information that the state or federal agency may require relating to compliance with the provisions of the environmental control easement.

(2) Within 15 days following the discovery of any material violation of the environmental control easement, the organization shall provide to the state or federal agency that approved the environmental control easement pursuant to 76-7-201 a written report setting forth the nature of the violation, the remedies that the grantee intends to undertake to correct the violation, and any other information that the state or federal agency may request.

(3) The organization shall notify, in writing, the state or federal agency that approved the environmental control easement pursuant to 76-7-201 of the organization's dissolution, the cessation of operations, or the occurrence of any other event that renders the organization incapable of performing its obligations under the terms of the environmental control easement.

History: En. Sec. 12, Ch. 503, L. 1999.

76-7-206. Assignability of easements. For the purpose of this chapter, an environmental control easement is assignable unless the instrument of conveyance or ownership expressly provides otherwise. An assignee must be qualified under the terms of this chapter to hold an environmental control easement. If an assignment is made in violation of the provisions of this section or in violation of the express terms of the instrument creating the easement, the assignment is void and the environmental control easement interests and obligations remain with the assignor.

History: En. Sec. 13, Ch. 503, L. 1999.

76-7-207. Coordination with local planning authority. (1) In order to minimize conflict with local comprehensive planning, the entity acquiring the environmental control easement shall provide a copy of the easement to the appropriate local planning authority for the county within which the land lies prior to or concurrently with recording.

(2) The requirement in subsection (1) to provide a copy of the environmental control easement to the local planning authority is only for the purposes of informing the authority of the easement.

(3) The failure to provide the environmental control easement to the local planning authority, as required in subsection (1), does not invalidate the easement.

History: En. Sec. 14, Ch. 503, L. 1999.

76-7-208. Recording and description of easement. (1) An environmental control easement must be recorded in the county where the property is located so as to effect the title in the manner of other conveyances of interest in the property and must describe the property subject to that easement by an adequate legal description or by reference to a recorded plat showing the property's boundaries.

(2) The county clerk and recorder shall, upon recording, place a copy of the environmental control easement in a separate file within the office of the county clerk and recorder and shall mail a copy of the easement to the department.

History: En. Sec. 15, Ch. 503, L. 1999.

76-7-209. Taxation of property subject to easement. (1) The value of the interest held by a federal public entity, a public body, or a qualifying private organization is exempt from property taxation.

(2) Expiration of an environmental control easement granted for a term of years may not result in a reassessment of the land for property tax purposes if the easement is renewed and the granting instrument reflecting the renewed easement is executed and properly filed not later than 15 days after the date of expiration.

History: En. Sec. 16, Ch. 503, L. 1999.

76-7-210. Easements to run with land. Notwithstanding 70-17-202 and 70-17-203(1) and (2), for the purposes of this chapter, an environmental control easement runs with the land, whether or not this fact is stipulated in the instrument creating the easement, and the easement binds the owner of the land and all successors and assigns.

History: En. Sec. 17, Ch. 503, L. 1999.

76-7-211. Easement enforcement. (1) Environmental control easements may be enforced by injunction, specific performance, other proceedings in equity or at law, or any other means specified in the instrument creating the easement. In addition to any right specified in the easement instrument, representatives of the holder of the environmental control easement are entitled to enter the land in a reasonable manner and at reasonable times to ensure compliance with the terms and conditions of the easement and to implement, operate, maintain, and monitor all remedial work and technologies.

(2) An environmental control easement is not unenforceable because of a lack of privity of estate or contract or a lack of benefit to particular land, because the easement is not an appurtenant easement, or because the easement is an easement in gross.

(3) An environmental control easement is enforceable against the owner of the fee and any persons or entities holding or claiming an interest in the property regardless of whether the interest is equal to or less than the whole fee estate.

(4) A delay or failure to enforce in any specific instance any violation of an environmental control easement does not preclude or waive the right to enforce against that violation or any other breach.

(5) The easement holder may waive, in a writing executed by the easement holder, any single violation of the terms of the environmental control easement without waiving any other prior or subsequent violation whether of the same or different nature. The easement holder may remedy a violation without waiving the violation remedied and is entitled to recover from the environmental control site owner all costs, including but not limited to direct and indirect costs of remedying the violation and costs of any other remedies provided by law or in the easement instrument.

(6) A claim or cause of action arising out of or relating to a violation of a term or provision of an environmental control easement must be filed in a court of appropriate jurisdiction within 10 years from the date upon which the party alleging violation of the easement had actual knowledge of the violation.

History: En. Sec. 18, Ch. 503, L. 1999.

76-7-212. Who may enforce easement. (1) The owner of any real property designated as a benefited property in the instrument creating the environmental control easement or the occupant of the benefited real property may maintain an action for enforcement of the easement.

(2) A public body or a qualified private organization holding an environmental control easement shall enforce the provisions of the easement.

(3) A person or entity specifically named as a beneficiary in the instrument creating the environmental control easement may enforce the provisions of the easement to the extent provided in the instrument.

History: En. Sec. 19, Ch. 503, L. 1999.

76-7-213. Liability. (1) The creation and approval of an environmental control easement do not waive or release any statutory liability or other obligation of a person for hazardous wastes or substances at an environmental control site. A federal public entity or public body may enforce any applicable law or obligation without regard to any allocation of liability in an easement instrument and without regard to exhaustion of remedies against any party to an easement instrument.

(2) An owner of a site to which the environmental control easement applies and any lessee or licensee of the land are liable for any violation of the provisions of the easement and are liable for abating the violation and for all damages, costs, and attorney fees arising from or attributable to the violation.

(3) Notwithstanding any other provision of law, the holder or other named beneficiary of an environmental control easement or other person enforcing the easement is not liable for hazardous wastes or substances at the environmental control site or for the release of a hazardous or deleterious substance from a facility at the site based upon its ownership of the easement or based upon its maintenance, monitoring, enforcement, or other actions with respect to the easement.

History: En. Sec. 20, Ch. 503, L. 1999.

CHAPTER 8
BUILDINGS FOR LEASE OR RENT

Part 1 — Lease or Rent — General Provisions

76-8-101. Definitions.
76-8-102. Buildings for lease or rent — review procedure.
76-8-103. Buildings for lease or rent — exemptions.
76-8-104 and 76-8-105 reserved.
76-8-106. Buildings for lease or rent — three or fewer buildings — application — review procedures.
76-8-107. Buildings for lease or rent — four or more buildings — regulations.
76-8-108. Additional review criteria — four or more buildings for lease or rent.
76-8-109 through 76-8-112 reserved.
76-8-113. Actions against governing body and department.
76-8-114. Violations — penalties.

Chapter Cross-References

Local regulation of subdivisions, Title 76, ch. 3.
State regulation of subdivisions, Title 76, ch. 4.
Conservation easements preventing subdivision of land, 76-6-203.
Water use — ground Water, Title 85, ch. 2, part 5.

Part 1
Lease or Rent — General Provisions

76-8-101. Definitions. As used in this part, the following definitions apply:

(1) "Building" means a structure or a unit of a structure with a roof supported by columns or walls for the permanent or temporary housing or enclosure of persons or property or for the operation of a business. The term includes a cell tower or multiple spaces for lease or rent under single ownership on which recreational vehicles as defined in 61-1-101 or mobile homes as defined in 15-24-201 will be placed. The term does not include a condominium or townhome.

(2) "Department" means the department of environmental quality provided for in 2-15-3501.

(3) "Governing body" means the legislative authority for a city, town, county, or consolidated city-county government.

(4) "Landowner" means an owner of a legal or equitable interest in real property. The term includes an heir, successor, or assignee of the ownership interest.

(5) "Local reviewing authority" means a local department or board of health that is approved to conduct reviews under Title 76, chapter 4.

(6) "Supermajority" means:

(a) an affirmative vote of at least two-thirds of the present and voting members of a city or town council;

(b) a unanimous affirmative vote of the present and voting county commissioners in counties with three county commissioners;

(c) an affirmative vote of at least four-fifths of the present and voting county commissioners in counties with five commissioners;

(d) an affirmative vote of at least two-thirds of the present and voting county commissioners in counties with more than five commissioners; or

(e) an affirmative vote of at least two-thirds of the present and voting members of the governing body of a consolidated city-county government.

(7) "Tract" means an individual parcel of land that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office.

History: En. Sec. 1, Ch. 379, L. 2013; amd. Sec. 4, Ch. 363, L. 2017; amd. Sec. 4, Ch. 589, L. 2025.

Compiler's Comments

2025 Amendment — Coordination: See 2025 Session Law for amendment made by sec. 4, Ch. 589, L. 2025. Amendment effective October 1, 2025.

The amendments to this section made by sec. 3, Ch. 187, L. 2025, and sec. 8, Ch. 486, L. 2025, were rendered void by sec. 7, Ch. 589, L. 2025, a coordination section.

Applicability: Section 8, Ch. 589, L. 2025, provided: "[This act] applies to recreational camping vehicles and mobile home spaces created on or after [the effective date of this act]." Effective October 1, 2025.

76-8-102. Buildings for lease or rent — review procedure. (1) Unless the buildings are exempt from review as provided in 76-8-103 or subject to review as provided in 76-8-106, an application for the creation of buildings for lease or rent on a single tract must be reviewed as provided in this section.

(2) An application pursuant to this section for the creation of buildings for lease or rent must be submitted for review to:

(a) the governing body or its agent or agency in which the buildings are proposed to be located; and

(b) the department or local reviewing authority if review by the department or local reviewing authority is required by Title 76, chapter 4 or to the local board or department of health if review is required by Title 50.

(3) (a) Upon receipt of an application and any applicable fees, the governing body or its agent or agency shall within 10 working days determine whether the application contains the required materials and sufficient information for review. The governing body or its agent or agency shall notify the applicant in writing as to whether the application is complete. If the application is incomplete, the governing body shall identify any missing materials or insufficient information.

(b) After the governing body or its agent or agency has notified the applicant that the application is complete, the governing body shall approve, conditionally approve, or deny the application for the creation of buildings for lease or rent pursuant to this section within 60 working days. The applicant and the governing body may agree to extend the time for review in writing.

(c) Review and approval, conditional approval, or denial of an application for the creation of buildings for lease or rent pursuant to this section must be based upon the regulations in effect at the time an application is determined to be complete. If regulations change during the period that the application is determined to be complete, the determination of whether the application is complete must be based on the new regulations.

(4) The governing body may establish a reasonable fee to be paid by the landowner commensurate with the cost of reviewing applications submitted pursuant to this section.

(5) If the governing body denies, approves, or conditionally approves the proposed creation of buildings for lease or rent pursuant to this section, the governing body shall provide written notification to the landowner within the 60 working-day period provided in this section.

History: En. Sec. 6, Ch. 379, L. 2013.

76-8-103. Buildings for lease or rent — exemptions. (1) A building created for lease or rent on a single tract is exempt from the provisions of this part if:

(a) the building is in conformance with applicable zoning regulations adopted pursuant to Title 76, chapter 2, parts 1 through 3, provided that the zoning contains the elements of 76-8-107; or

(b) when applicable zoning regulations are not in effect:

(i) the building was in existence or under construction before September 1, 2013;

(ii) the building provides accommodations as defined in 15-68-101 that are subject to the lodging facility use tax under Title 15, chapter 65, except for spaces created for recreational camping vehicles or mobile home parks;

(iii) the building is created for lease or rent for farming or agricultural purposes;

(iv) the building is not served by water and wastewater and will not be leased or rented;

(v) the building is served by water and wastewater and the landowner records a notarized declaration with the clerk and recorder of the county in which the property is located stating that the proposed building will not be leased or rented. The declaration recorded pursuant to this subsection (1)(b)(v) runs with the land and is binding on the landowner and all subsequent landowners and successors in interest to the property. The declaration must include but is not limited to:

(A) the name and address of the landowner;

(B) a legal description of the tract upon which the proposed building will be located; and

(C) a specific description of the building on the tract of record.

(2) Any building that is exempt under subsection (1) from the provisions of this part and that is or will be served by water or wastewater must be in compliance with the provisions of 76-8-106.

(3) The exemption provided in subsection (1)(b)(i) is limited to the first three buildings created for lease or rent on a single tract.

History: En. Sec. 2, Ch. 379, L. 2013; amd. Sec. 10, Ch. 484, L. 2021; amd. Sec. 5, Ch. 589, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 5, Ch. 589, L. 2025. Amendment effective October 1, 2025.

Applicability: Section 8, Ch. 589, L. 2025, provided: "[This act] applies to recreational camping vehicles and mobile home spaces created on or after [the effective date of this act]." Effective October 1, 2025.

76-8-104 and 76-8-105 reserved.

76-8-106. Buildings for lease or rent — three or fewer buildings — application — review procedures. (1) A landowner shall submit an application for the creation of the first three or fewer buildings for lease or rent on a single tract to the department or local reviewing authority for sanitation review if review is required by Title 76, chapter 4, or to the local board or department of health if review is required by Title 50.

(2) If the department or local reviewing authority approves the application, the landowner shall record the certificate of approval and any conditions for the approval of the application with the county clerk and recorder.

(3) If a building for lease or rent is created on a single tract on or after September 1, 2013, and the tract is later subdivided or an exemption from subdivision review is used pursuant to Title 76, chapter 3, any building for lease or rent on the new tract is subject to the provisions of 76-8-102, 76-8-107, and 76-8-108.

History: En. Sec. 3, Ch. 379, L. 2013.

76-8-107. Buildings for lease or rent — four or more buildings — regulations. (1) A governing body shall adopt regulations for the administration and enforcement of the creation of four or more buildings for lease or rent on a single tract.

(2) The regulations adopted pursuant to this section must, at a minimum:

(a) list the materials that must be included in an application for the creation of four or more buildings for lease or rent;

(b) require a description of:
(i) property boundaries;
(ii) onsite and adjacent offsite streets, roads, and easements;
(iii) geographic features;
(iv) existing septic tanks and drainfields;
(v) existing wells; and
(vi) existing and proposed buildings;
(c) require adequate water supply and sewage and solid waste disposal facilities;
(d) require an assessment of potential significant impacts on the surrounding physical environment and human population in the area to be affected, including conditions, if any, that may be imposed on the proposal to avoid or minimize potential significant impacts identified;
(e) require adequate emergency medical, fire protection, and law enforcement services;
(f) require access to the site;
(g) comply with applicable flood plain requirements; and
(h) comply with an adopted growth policy.

(3) (a) Prior to adopting regulations pursuant to this section, the governing body shall provide an opportunity for public hearing and comment on the proposed regulations. Notice of the public hearing must be published:

(i) as provided in 7-1-2121 if the governing body is a county commission and posted not less than 30 days before the public hearing in at least five public places, including but not limited to public buildings; or

(ii) as provided in 7-1-4127 if the governing body is a city commission or a town council.

(b) Public comment must be addressed before the regulations are adopted.

History: En. Sec. 4, Ch. 379, L. 2013; amd. Sec. 14, Ch. 272, L. 2025; amd. Sec. 6, Ch. 589, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 14, Ch. 272, L. 2025. Amendment effective October 1, 2025.

See 2025 Session Law for amendment made by sec. 6, Ch. 589, L. 2025. Amendment effective October 1, 2025.

Applicability: Section 8, Ch. 589, L. 2025, provided: "[This act] applies to recreational camping vehicles and mobile home spaces created on or after [the effective date of this act]." Effective October 1, 2025.

76-8-108. Additional review criteria — four or more buildings for lease or rent. (1) (a) Upon a majority vote, a governing body may increase the minimum number of buildings created for lease or rent that are subject to review by the governing body pursuant to 76-8-107. The governing body may elect to increase the minimum number subject to review by the governing body for all buildings created for lease or rent or may limit the increase to specific types or uses of buildings created for lease or rent.

(b) For purposes of subsection (1)(a), the governing body shall adopt regulations pursuant to 76-8-107 identifying the number or types of buildings created for lease or rent that are subject to review by the governing body.

(2) Upon a supermajority vote, the governing body may adopt regulations pursuant to 76-8-107 for the purpose of reviewing four or more buildings for lease or rent that are in addition to the regulations provided in 76-8-107. For purposes of this subsection, a governing body may adopt any regulations it considers necessary to protect public health, safety, or the general welfare.

History: En. Sec. 5, Ch. 379, L. 2013.

76-8-109 through 76-8-112 reserved.

76-8-113. Actions against governing body and department. (1) An applicant who has filed an application for the creation of buildings for lease or rent and who is aggrieved by a decision of the department or the local reviewing authority may request a hearing as provided in 76-4-126(1). For purposes of this subsection, the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to the proceeding.

(2) An applicant who has filed an application for the creation of buildings for lease or rent or a landowner with a property boundary contiguous to the tract on which the buildings are proposed to be located who is aggrieved by a decision of the governing body may, within 30 days of the date of the decision of the governing body, appeal to the district court in the county in which the property involved is located.

(3) For purposes of this section, "aggrieved" has the meaning provided in 76-3-625.

History: En. Sec. 7, Ch. 379, L. 2013.

76-8-114. Violations — penalties. (1) If any building is created in violation of this part, the governing body may, in addition to assessing a fine or penalty not to exceed a maximum of $500, initiate an action to:

(a) prevent the unlawful creation of the building;

(b) restrain, correct, or abate a violation; or

(c) prevent the occupancy of the building.

(2) For the purposes of enforcing the provisions of this part, the governing body shall attempt to obtain voluntary compliance from the landowner at least 30 days prior to initiating an action for a violation of this part.

History: En. Sec. 8, Ch. 379, L. 2013.

CHAPTER 9
SHOOTING RANGES

Part 1 — Protection of Shooting Range Location and Investments

76-9-101. Policy.
76-9-102. Prohibitions.
76-9-103. Planning — effect on shooting ranges.
76-9-104. Zoning — effect on shooting ranges.
76-9-105. Closure of shooting ranges — limitations — relocation cost.

Part 2 — Montana State Shooting Facilities and Improvements

76-9-201 reserved.
76-9-202. State shooting facilities and improvements development and oversight task force — membership — duties — reporting.
76-9-203. Montana state shooting facilities and improvements account.

Part 1
Protection of Shooting Range Location and Investments

76-9-101. Policy. It is the policy of the state of Montana to provide for the health, safety, and welfare of the citizens of the state by promoting the safety and enjoyment of the shooting sports among the citizens of the state and by protecting the locations of and investment in shooting ranges for shotgun, archery, rifle, and pistol shooting.

History: En. Sec. 1, Ch. 415, L. 1991.

76-9-102. Prohibitions. (1) Standards adopted by a state agency or unit of local government to limit levels of noise that may occur in the outdoor atmosphere may not apply to shooting ranges.

(2) Standards adopted by a state agency or unit of local government promulgated pursuant to Title 75 and concerning pollution by lead, copper, or brass may not limit or prohibit the operation of a shooting range because of lead, copper, or brass deposition resulting from shooting activities.

History: En. Sec. 2, Ch. 415, L. 1991.

76-9-103. Planning — effect on shooting ranges. The laws of this state concerning planning or growth policies, as defined in 76-1-103, may not be construed to authorize an ordinance, resolution, or rule that would:

(1) prevent the operation of an existing shooting range as a nonconforming use;

(2) prohibit the establishment of new shooting ranges, but the ordinance, resolution, or rule may regulate the construction of shooting ranges to specified zones; or

(3) prevent the erection or construction of safety improvements on existing shooting ranges.

History: En. Sec. 3, Ch. 415, L. 1991; amd. Sec. 65, Ch. 44, L. 2007.

76-9-104. Zoning — effect on shooting ranges. A planning district growth policy, recommendation, resolution, rule, or zoning designation may not:

(1) prevent the operation of an existing shooting range as a nonconforming use;

(2) prohibit the establishment of new shooting ranges, but it may regulate the construction of shooting ranges to specified zones; or

(3) prevent the erection or construction of safety improvements on existing shooting ranges.

History: En. Sec. 4, Ch. 415, L. 1991; amd. Sec. 33, Ch. 582, L. 1999.

76-9-105. Closure of shooting ranges — limitations — relocation cost. (1) Except as provided in subsection (2), an established shooting range may not be prevented from operation by a state agency, unit of local government, or court unless the range presents a clear and provable safety hazard to the adjacent population.

(2) If a pressing public need exists because of incompatibility with nearby population or land use, an established shooting range may be relocated by an agency of state government, unit of local government, or court, but only if all of the following conditions are met:

(a) pressing public need is documented through hearings, testimony, and a clear and precise statement of need by the agency, unit of local government, or court involved;

(b) the agency or unit of local government obtaining the closure pays the appraised cost of the land together with improvements to the operators of the shooting range. In return the shooting range operators shall relinquish their interest in the property to the agency or unit of local government obtaining the closure.

(3) If a shooting range presents a clear and provable safety hazard to adjacent population, the range may be suspended from operation if:

(a) reasonable notice and opportunity to respond are afforded the range operators; and

(b) reasonable opportunity is afforded the range operators to correct any safety defects.

History: En. Sec. 5, Ch. 415, L. 1991.

Part 2
Montana State Shooting Facilities and Improvements

76-9-201 reserved.

76-9-202. *(Temporary)* **State shooting facilities and improvements development and oversight task force — membership — duties — reporting.** (1) There is a state shooting facilities and improvements development and oversight task force, which is composed of the following members:

(a) the governor or the governor's designee;

(b) a member of the board of state parks and recreation or the board member's designee;

(c) the director of the department of commerce or the director's designee;

(d) two members representing firearm, archery, or firearm accessory manufacturing companies in the state, appointed by the governor;

(e) one member of the public representing a shooting sports organization that has representation in the state, appointed by the governor;

(f) one member of the public representing a hunting or wildlife conservation organization that is headquartered in the state or that has an active chapter in the state, appointed by the governor;

(g) two members of the house of representatives, appointed by the speaker of the house. The speaker of the house shall designate a co-chairperson of the task force.

(h) two members of the senate, appointed by the president of the senate. The president of the senate shall designate a co-chairperson of the task force.

(2) The task force shall:

(a) develop a framework for the selection of a location for Montana state shooting facilities and improvements;

(b) review all shooting facilities in the region and develop preliminary specifications, plans, and features for Montana state shooting facilities and improvements;

(c) develop a request for proposals so that local governments, private sector entities, or a combination of both may submit proposals to be considered for the location of Montana state shooting facilities and improvements; and

(d) make recommendations for the development, location, and administrative structure of Montana state shooting facilities and improvements to the governor, the joint appropriations subcommittee on natural resources and transportation, and the joint fish, wildlife, and parks committee.

(3) A vacancy in the task force must be filled in the same manner as members are appointed under subsection (1).

(4) By June 30, 2027, the task force shall report to the governor and the economic affairs interim committee.

(5) The task force is allocated to the department of fish, wildlife, and parks for administrative purposes only as provided in 2-15-121.

(6) (a) Except as provided in subsection (6)(b) and unless otherwise provided by law, each member is entitled to be paid $100 for each day in which the member is engaged in the performance of duties under this section and is also entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while performing task force duties.

(b) Members who are full-time, salaried officers or employees of this state or of a political subdivision of this state are not entitled to be compensated for their service as members except when they perform their task force duties outside of their regular working hours or during hours charged against their leave time, but those members are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503. *(Terminates June 30, 2027—sec. 5, Ch. 750, L. 2025.)*

History: En. Sec. 1, Ch. 750, L. 2025.

Compiler's Comments

Effective Date: Section 4, Ch. 750, L. 2025, provided: "[This act] is effective July 1, 2025."

Termination: Section 5, Ch. 750, L. 2025, provided that this section terminates June 30, 2027.

76-9-203. Montana state shooting facilities and improvements account. (1) There is a Montana state shooting facilities and improvements account in the state special revenue fund established in 17-2-102. The account is administered by the department of fish, wildlife, and parks.

(2) Money transferred from a lawful source, including but not limited to gifts, grants, donations, securities, and other assets, public or private, may be deposited in the account.

(3) Money in the account may be used to develop a framework for the selection and location of state-supported shooting facilities, improvements in existing facilities, and funding mechanisms.

(4) Interest and income earned on the account and any unspent or unencumbered money in the account at the end of a fiscal year must remain in the account.

History: En. Sec. 2, Ch. 750, L. 2025.

Compiler's Comments

Effective Date: Section 4, Ch. 750, L. 2025, provided: "[This act] is effective July 1, 2025."

CHAPTER 10
REGULATION OF WILDCRAFTING

Part 1 — General Provisions

76-10-101. Purpose.
76-10-102. Definitions.
76-10-103. Written permission or permit to wildcraft required.
76-10-104. Exemption from written permission or permit requirement.
76-10-105. Requirements of buyer.
76-10-106. Restriction on liability of landowner.
76-10-107. Violations — penalties.

Part 1
General Provisions

76-10-101. Purpose. (1) The purpose of this part is to:

(a) encourage the growth of a statewide sustainable wildcrafting industry that encourages stewardship of the wild plant natural resources of the state by requiring a person who is wildcrafting for commercial purposes to obtain a permit or permission in a written form before the person can wildcraft and by providing enforcement procedures;

(b) require buyers to be accountable for wildcrafted plant material that they purchase by requiring recordkeeping; and

(c) establishing enforcement procedures.

(2) The state recognizes its limited jurisdiction within the Indian reservations in Montana and acknowledges and respects the government-to-government relationship between Montana and the tribes within its borders. It is the legislature's intent that this part be implemented within current jurisdictional limitations. The tribes are invited to enter into state-tribal cooperative agreements with Montana to provide for broader implementation.

History: En. Sec. 1, Ch. 282, L. 2001.

76-10-102. Definitions. As used in this part, the following definitions apply:

(1) "Buyer" means a person who purchases or acquires wildcrafted plant material, other than materials acquired directly from the property owner, for the purposes of resale.

(2) "Commercial purposes" means the harvest of wildcrafted plant material for the purpose of selling, trading, or otherwise exchanging the material for profit.

(3) "Landowner" means a person or entity of any nature, whether private, governmental, or quasi-governmental, and includes the landowner's agent, tenant, lessee, or occupant, a grantee of a conservation easement, a water users' association, an irrigation district, a drainage district, or persons or entities in control of property or with an agreement to use or occupy property.

(4) "Other jurisdictional entity" means the federal government or a tribal government.

(5) "Person" includes an individual, partnership, association, corporation, and any other body or group of persons, whether incorporated or not and regardless of the degree of formal organization.

(6) "Property" means land, roads, water, watercourses, and private ways. The term includes any improvements, buildings, structures, machinery, and equipment on property.

(7) "Seller" means a person who sells wildcrafted plant material.

(8) "Transport" means the physical conveyance of wildcrafted plant material away from the site of wildcrafting and includes but is not limited to transportation by:

(a) a motor vehicle designed for use on improved roadways;

(b) a boat, barge, raft, or other water vessel; or

(c) an airplane, helicopter, balloon, or other aircraft.

(9) (a) "Wildcraft" means to collect, harvest, or separate by cutting, prying, picking, peeling, breaking, pulling, digging, splitting, or otherwise removing uncultivated plants or plant parts from their physical connection or point of contact with the ground or vegetation upon which they are growing or from the place or position where they lay for commercial purposes.

(b) The term does not include the collection of:

(i) plant material used for a campfire; or

(ii) amounts intended for personal consumption.

(10) "Wildcrafted plant material" means any plant or part of any plant species that is not cultivated and that is growing wild on any lands in Montana.

(11) "Wildcrafter" means a person who wildcrafts plants.

History: En. Sec. 2, Ch. 282, L. 2001.

76-10-103. Written permission or permit to wildcraft required. (1) It is unlawful for any person to wildcraft or transport wildcrafted plant material without having in the person's possession a bill of sale, a signed, written permission form, or a permit from a landowner to wildcraft from the property from which the material is wildcrafted. The written permission or permit must include the following:

(a) the date the permission is given or the permit is issued;

(b) the name, address, telephone number, and signature of the person granting the permission or issuing the permit;

(c) the name, address, and telephone number of the person that is granted the permission or issued the permit;

(d) the common name or scientific name of the plant to be wildcrafted;

(e) the amount and specified part of the plant material to be wildcrafted;

(f) a description of the location on the property from which plant material may be wildcrafted;

(g) the expiration date of the permission or permit; and

(h) the license plate number of the vehicle to be used for the purposes of wildcrafting.

(2) Written permission given or a permit issued to the person supervising a crew of wildcrafters is an acceptable substitute for individual permission or permits.

History: En. Sec. 3, Ch. 282, L. 2001.

76-10-104. Exemption from written permission or permit requirement. The following are exemptions to the requirements of 76-10-103:

(1) A permit issued by a land management agency, another government agency, or any other jurisdictional entity in the state is acceptable in lieu of the written permission if the wildcrafting occurs on land managed by the entity issuing the permit.

(2) A landowner or other jurisdictional entity does not need written permission or a permit to wildcraft on property that the landowner or other jurisdictional entity owns.

(3) Written permission or a permit is not required for the amount of wildcrafted plant material that the landowner or other jurisdictional entity determines is for personal or incidental use.

History: En. Sec. 4, Ch. 282, L. 2001.

76-10-105. Requirements of buyer. (1) A buyer of wildcrafted plant material shall keep records of purchases or acquisitions of wildcrafted plant material for a period of 3 years from the date of purchase or acquisition.

(2) Copies of the records must be made available to a law enforcement officer upon request.

(3) The records must include:

(a) the date of purchase or acquisition;

(b) the common name or scientific name of the wildcrafted plant material;

(c) the number of the permit, if a number exists, or a copy of the permit or the written permission authorizing the wildcrafting, unless the material came from property owned by the seller;

(d) the name, address, telephone number, and signature of the person from whom the wildcrafted plant material was obtained;

(e) the license plate number of the vehicle that was used to deliver the wildcrafted plant material to the buyer;

(f) the quantity and plant part of wildcrafted plant material purchased or acquired; and

(g) the name, address, and telephone number of the landowner from whose land the wildcrafted plant material was harvested.

History: En. Sec. 5, Ch. 282, L. 2001.

76-10-106. Restriction on liability of landowner. (1) A person who uses private property for wildcrafting purposes, with or without permission, does so without any assurance from the landowner that the property is safe for any purpose. The landowner owes the person no duty of care with respect to the condition of the property, except that the landowner is liable to the person for any injury to person or property for an act or omission that constitutes willful or wanton misconduct.

(2) A person who uses public property for wildcrafting purposes, with or without permission, does so without any assurance from the landowner that the property is safe for any purpose. The landowner owes the person no duty of care with respect to the condition of the property, except that the landowner is liable to the person for any injury to person or property for an act or omission that constitutes willful or wanton misconduct.

History: En. Sec. 6, Ch. 282, L. 2001.

76-10-107. Violations — penalties. (1) It is unlawful for a person to:

(a) fail to obtain permission from a landowner to enter property for purposes of wildcrafting;

(b) transport wildcrafted plant material without a bill of sale, a signed, written permission form, or a permit from a landowner as provided in 76-10-103;

(c) have in the person's possession an amount of wildcrafted plant material that is in excess of the amount granted in the bill of sale, written permission, or permit.

(2) A person who is found to have violated subsection (1) is guilty of a misdemeanor punishable by a fine in an amount not less than $100 or more than $1,000 or by imprisonment in the county jail for a term not to exceed 6 months or not less than 24 hours, or both, for a first offense. An offender convicted of a second offense under this section shall be fined not less than $500 or more than $1,000 or be imprisoned in the county jail for a term not to exceed 1 year or not less than 6 months, or both.

(3) All wildcrafted plant material that is illegally wildcrafted, transported, or in the possession of a person convicted under this section must be impounded.

(4) The incidental disturbance of plants by a lessee or permittee who is lawfully exercising rights granted under the lease or permit is not considered to be in violation of this part.

History: En. Sec. 7, Ch. 282, L. 2001.

CHAPTER 11
NATURAL RESOURCES IN GENERAL

Part 1 — Protection From Fire (Renumbered and Repealed)

Part 2 — Soil Survey and Mapping Program

76-11-201. Short title.
76-11-202. Purpose.
76-11-203. Repealed.
76-11-204. Repealed.

Chapter Cross-References

Natural resource information system, Title 90, ch. 15.

Part 1
Protection From Fire
(Renumbered and Repealed)

76-11-101. Repealed. Sec. 30, Ch. 336, L. 2007.

History: En. Sec. 14, Ch. 147, L. 1909; re-en. Sec. 1836, R.C.M. 1921; re-en. Sec. 1836, R.C.M. 1935; amd. Sec. 1, Ch. 220, L. 1955; amd. Sec. 105, Ch. 253, L. 1974; amd. Sec. 18, Ch. 397, L. 1977; R.C.M. 1947, 81-1415; amd. Sec. 1, Ch. 529, L. 1981; amd. Sec. 259, Ch. 418, L. 1995; amd. Sec. 1, Ch. 27, L. 1997.

76-11-102. Renumbered 76-13-136. Sec. 32(2), Ch. 336, L. 2007.

Part 2
Soil Survey and Mapping Program

76-11-201. Short title. This part may be cited as the "Montana Soil Survey Act".

History: En. Sec. 1, Ch. 358, L. 1979.

76-11-202. Purpose. (1) The legislature finds that the soils of the state of Montana are one of its most basic and precious natural resources and that detailed knowledge of soil capabilities and adaptability is essential for:

(a) making wise land use decisions;

(b) preparing plans for cities, towns, counties, planning boards, farmers, foresters, industrial developers, and residential developers;

(c) locating and designing buildings, highways, reservoirs, and recreation areas; and

(d) protecting our forest, range, and agricultural lands.

(2) Pursuant to these findings, it is the intention of the legislature to accelerate the survey and mapping of the state's soil resources, to set a goal of completing the soil survey and mapping program.

History: En. Sec. 2, Ch. 358, L. 1979.

76-11-203. Repealed. Sec. 500, Ch. 418, L. 1995.
History: En. Sec. 3, Ch. 358, L. 1979; amd. Sec. 52, Ch. 112, L. 1991; amd. Sec. 46, Ch. 349, L. 1993.

76-11-204. Repealed. Sec. 500, Ch. 418, L. 1995.
History: En. Sec. 5, Ch. 358, L. 1979.

CHAPTER 12
WILD AND SCENIC RESOURCES

Part 1 — Natural Areas

76-12-101. Short title.
76-12-102. Legislative findings.
76-12-103. Statement of policy.
76-12-104. Definitions.
76-12-105. Repealed.
76-12-106. Repealed.
76-12-107. Methods of bringing land under part.
76-12-108. Acquisition of lands.
76-12-109. Report to legislature.
76-12-110. Restriction on condemnation or development of natural areas.
76-12-111. Continuation of existing uses.
76-12-112. Duties of board — administrative rules and hearing requirements.
76-12-113. Repealed.
76-12-114. Repealed.
76-12-115. Consultation with interested parties.
76-12-116. Files and proceedings open to public.
76-12-117. Application of more restrictive provisions.
76-12-118 through 76-12-120 reserved.
76-12-121. Duties of department — plan for natural areas system.
76-12-122. Terminated.
76-12-123. Natural areas account.

Part 1
Natural Areas

Part Cross-References
State forest lands — deferral of management prohibited, 77-5-116.

76-12-101. Short title. This part shall be known and may be cited as the "Montana Natural Areas Act of 1974".
History: En. 81-2701 by Sec. 1, Ch. 254, L. 1974; R.C.M. 1947, 81-2701.

76-12-102. Legislative findings. The legislature finds that:

(1) in the expanses of Montana there are natural areas possessing significant scenic, educational, scientific, biological, and/or geological values or areas possessing these characteristics to a degree promising their restoration to a natural state;

(2) since the development of these areas is an irreversible commitment of a finite and diminishing resource of fundamental importance, selected areas should be preserved for the benefit of this and future generations;

(3) currently there are no regulations promulgated by the state or local governments to insure adequate protection for natural areas;

(4) it is necessary to establish a process for developing a system of natural areas and to encourage public and private participation in the establishment of a natural areas system for the benefit of the citizens of the state; and

(5) designations of natural areas should first consider protected natural features in publicly owned and privately dedicated lands, such as nature preserves, natural areas, parks, and wilderness areas, and should avoid duplication of these features.
History: En. 81-2702 by Sec. 2, Ch. 254, L. 1974; R.C.M. 1947, 81-2702(part); amd. Sec. 1, Ch. 460, L. 1987.

76-12-103. Statement of policy. (1) It is the intention of the legislature to establish a system for the protection of natural or potentially natural areas in order to preserve their natural ecosystem integrity in perpetuity.

(2) In this connection, the legislature recognizes the fact that the school trust lands are held in trust for the support of education and for the attainment of other worthy objects helpful to the well-being of the people of the state; that it is the duty of the board of land commissioners to administer this trust so as to secure the largest measure of legitimate and reasonable advantage to the state; and hereby declares the preservation of natural areas, whether trust or other lands, for the enjoyment and inspiration of future generations to be an object worthy of legislative action helpful to the well-being of the people of the state and also declares that the preservation of natural areas on state trust land has sufficient value to present and future education to meet the state's obligation for the disposition and utilization of trust lands as specified in The Enabling Act.

History: En. 81-2702 by Sec. 2, Ch. 254, L. 1974; R.C.M. 1947, 81-2702(part).

76-12-104. Definitions. (1) "Board" means the board of land commissioners.

(2) "Department" means the department of natural resources and conservation.

(3) "Natural area" means an area of land that must generally appear to have been affected primarily by the forces of nature with the visual aspects of human intrusion not dominant and also must have one or more of the following characteristics:

(a) an outstanding mixture or variety of vegetation, wildlife, water resource, landscape, and scenic values;

(b) an important or rare ecological or geological feature or other rare or significant natural feature worthy of preservation for scientific, educational, or ecological purposes.

(4) "Natural areas system" means the composite of lands in the state that exhibit the characteristics of natural areas and that have been designated by the board or dedicated or otherwise protected and managed as natural areas.

(5) "Register" means the Montana register of natural areas established under 76-12-121.

History: En. 81-2703 by Sec. 3, Ch. 254, L. 1974; R.C.M. 1947, 81-2703; amd. Sec. 2, Ch. 460, L. 1987; amd. Sec. 261, Ch. 418, L. 1995.

76-12-105. Repealed. Sec. 11, Ch. 460, L. 1987.

History: En. 81-2705 by Sec. 5, Ch. 254, L. 1974; R.C.M. 1947, 81-2705(part).

76-12-106. Repealed. Sec. 11, Ch. 460, L. 1987.

History: En. 81-2705 by Sec. 5, Ch. 254, L. 1974; R.C.M. 1947, 81-2705(part).

76-12-107. Methods of bringing land under part. A natural area, as defined in 76-12-104, may become subject to the provisions of this part in any of the following ways:

(1) designation by the board on lands controlled by the board;

(2) designation by the legislature on lands owned by the state of Montana;

(3) acquisition by the board by purchase with consent of the property owner of sufficient interests in private property to protect the natural area; provided, however, that transfer of surface property or development rights shall not alter the rights attending the subsurface estate if owned by another party;

(4) gift accepted by the board under the authority of 77-1-213, including conservation easements, provided that lands accepted must be protected and managed as natural areas and money accepted must be used in accordance with the purposes of this part;

(5) trade of state-owned trust land for a natural area on federal, county, or private land, provided, however, that lands received in exchange for trust lands should be equal in value to the exchanged trust land and as closely as possible equal in area; or

(6) registration of land by the department, following appropriate documentation and owner consent, that has been designated, dedicated, or otherwise protected as a natural area by the owner, including a private landowner, public interest group, or other land management agency.

History: En. 81-2704 by Sec. 4, Ch. 254, L. 1974; R.C.M. 1947, 81-2704; amd. Sec. 4, Ch. 460, L. 1987.

Cross-References

Exchanges of land, Title 77, ch. 2, part 2.

76-12-108. Acquisition of lands. Subject to the limits of available appropriations, the board is authorized to acquire interests in land by purchase, grant, deed, gift, or devise for the purpose of designating natural areas.

History: En. 81-2707 by Sec. 7, Ch. 254, L. 1974; R.C.M. 1947, 81-2707; amd. Sec. 95, Ch. 125, L. 2001; amd. Sec. 4, Ch. 238, L. 2023.

Cross-References
Preservation of cultural resources, Art. IX, sec. 4, Mont. Const.
Eminent domain, Title 70, ch. 30.

76-12-109. Report to legislature. The board may, as provided in 5-11-210, submit to each legislature a report on its designation and acquisition activities.
History: En. 81-2705 by Sec. 5, Ch. 254, L. 1974; R.C.M. 1947, 81-2705(part); amd. Sec. 53, Ch. 112, L. 1991; amd. Sec. 47, Ch. 349, L. 1993.

76-12-110. Restriction on condemnation or development of natural areas. Natural areas acquired or designated in accordance with the provisions of this part are protected from condemnation or other development adversely affecting the integrity of the natural area until legislative action is taken specifically authorizing the development or condemnation, as provided in Title 70, chapter 30.
History: En. 81-2708 by Sec. 8, Ch. 254, L. 1974; R.C.M. 1947, 81-2708(1); amd. Sec. 96, Ch. 125, L. 2001.
Cross-References
Eminent domain, Title 70, ch. 30.
Signs prohibited near natural areas, 75-15-113(8).

76-12-111. Continuation of existing uses. Land uses on the designated or acquired natural area in existence at the time of designation or acquisition by the board may continue under appropriate leases or agreements. All such land uses shall be controlled under regulations established by the board under 76-12-112.
History: En. 81-2708 by Sec. 8, Ch. 254, L. 1974; R.C.M. 1947, 81-2708(2).

76-12-112. Duties of board — administrative rules and hearing requirements. (1) The board shall, after at least one public hearing, promulgate comprehensive regulations for the protection of acquired and designated natural areas within its jurisdiction. Such regulations shall be consistent with the intent of this part and shall be promulgated and enforced so as to protect the qualities of the natural areas. Special attention shall be given to protecting areas from recreational overuse.

(2) The regulations shall provide for meetings by the board for the receipt of testimony on the department's proposed designation of natural areas. No area shall be designated by the board unless the opportunity for public testimony has been afforded at meetings provided for in the regulations and positive notification of all involved landowners and lessees has been made.

(3) The board shall consider the department's recommendations as provided in 76-12-121(4) and issue a statement of its decision.
History: En. 81-2709 by Sec. 9, Ch. 254, L. 1974; R.C.M. 1947, 81-2709; amd. Sec. 5, Ch. 460, L. 1987.
Cross-References
Application of Montana Administrative Procedure Act, Title 2, ch. 4.

76-12-113. Repealed. Sec. 11, Ch. 460, L. 1987.
History: En. 81-2710 by Sec. 10, Ch. 254, L. 1974; R.C.M. 1947, 81-2710(part).

76-12-114. Repealed. Sec. 11, Ch. 460, L. 1987.
History: En. 81-2710 by Sec. 10, Ch. 254, L. 1974; R.C.M. 1947, 81-2710(part).

76-12-115. Consultation with interested parties. The department shall consult with citizen organizations, organizations representing Montana's basic resource industries, and other interested state agencies in the administration of this part.
History: En. 81-2711 by Sec. 11, Ch. 254, L. 1974; R.C.M. 1947, 81-2711(part); amd. Sec. 8, Ch. 460, L. 1987.

76-12-116. Files and proceedings open to public. All files and proceedings under this part shall be open to the public.
History: En. 81-2711 by Sec. 11, Ch. 254, L. 1974; R.C.M. 1947, 81-2711(part).
Cross-References
Right to know, Art. II, sec. 9, Mont. Const.

76-12-117. Application of more restrictive provisions. A designated natural area that is or shall become a part of a state park, wildlife refuge, or similar area shall be subject to the provisions of this part and the laws under which the other areas may be administered, and in the case of conflict between the provisions of these laws, the more restrictive provisions shall apply.
History: En. 81-2712 by Sec. 12, Ch. 254, L. 1974; R.C.M. 1947, 81-2712.

76-12-118 through 76-12-120 reserved.

76-12-121. Duties of department — plan for natural areas system. The department may:

(1) identify the existing and potential natural areas on lands under its jurisdiction and annually prepare a register listing the existing natural areas on private, county, state, and federal land;

(2) prepare and implement a biennial administrative plan for a natural areas system that will:

(a) assure equitable representation of the diversity of natural area types that are found to occur on private, county, state, and federal lands; and

(b) include identification of important natural area needs, viable methods to make eligible lands a part of the natural areas system, responsible management entities, goals for establishing natural areas, obligations of cooperating agencies, organizations, and individuals, and administrative procedures for registering natural areas with the department;

(3) consider the concerns and comments of the board and the public in preparing and implementing the administrative plan described in subsection (2);

(4) make recommendations to the board for designation of natural areas on state lands and for acquisition of interests in other lands for the preservation of natural areas;

(5) provide that designated natural areas on state lands are available for multiple uses, including but not limited to grazing, recreation, and snowmobiling, if such uses are consistent with the state's obligations under The Enabling Act and do not interfere with the management or integrity of the natural area; and

(6) provide that the management of natural areas on state lands includes provisions for weed control consistent with 7-22-2151. The department assumes any levy under 7-22-2142 in natural areas; the lessee is not responsible for fire suppression costs in natural areas, and the lessee is not responsible for keeping natural areas free of garbage and debris.

History: En. Sec. 3, Ch. 460, L. 1987.

76-12-122. Terminated. Sec. 15, Ch. 460, L. 1987.

History: En. Sec. 7, Ch. 460, L. 1987.

76-12-123. Natural areas account. (1) There is a natural areas special revenue account within the state special revenue fund established in 17-2-102.

(2) The natural areas account may receive funds from any source as gifts.

(3) The department may spend funds accepted as gifts in accordance with the purposes of this part, including administration of a natural areas program.

History: En. Sec. 9, Ch. 460, L. 1987; amd. Sec. 10, Ch. 628, L. 1989; amd. Sec. 56, Ch. 422, L. 1997.

CHAPTER 13
TIMBER RESOURCES

Part 1 — Protection of Forest Resources

76-13-101. Purpose.
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76-13-106. Repealed.
76-13-107. Classification of forest lands.
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76-13-908. Department study of prescribed fire liability.

Chapter Cross-References

County forests, Title 7, ch. 8, part 26.
Timber trespass — treble damages, 70-16-107.
Timber resources on state lands, Title 77, ch. 5.
Functions of Department of Commerce respecting forestry, 90-1-102.

Part 1
Protection of Forest Resources

76-13-101. Purpose. (1) (a) It is the purpose of part 2 and this part to provide for:

(i) the protection and conservation of natural resources, range, and water; and

(ii) the prevention of soil erosion.

(b) It is further the purpose of part 2 and this part to more adequately promote and facilitate the cooperation, financial and otherwise, between the state and public and private agencies that are associated in the work.

(2) To achieve the conservation of natural and watershed resources, the legislature encourages the use of best management practices in timber sale planning, associated road construction and reconstruction, timber harvesting, site preparation, and related activities and establishes a process to ensure that information on best management practices is provided to owners and operators engaged in forest practices on private land.

History: En. 28-101.1 by Sec. 1, Ch. 253, L. 1974; R.C.M. 1947, 28-101.1; amd. Sec. 1, Ch. 423, L. 1989; amd. Sec. 3, Ch. 336, L. 2007.

76-13-102. Definitions. Unless the context requires otherwise, in part 2 and this part, the following definitions apply:

(1) "Conservation" means the protection and wise use of forest, range, water, and soil resources in keeping with the common welfare of the people of this state.

(2) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(3) "Forest land" means land that has enough timber, standing or down, slash, or brush to constitute in the judgment of the department a fire menace to life or property. Grassland and agricultural areas are included when those areas are intermingled with or contiguous to and no further than one-half mile from areas of forest land.

(4) (a) "Forest practices" means the harvesting of trees, road construction or reconstruction associated with harvesting and accessing trees, site preparation for regeneration of a timber stand, reforestation, and the management of logging slash.

(b) The term does not include activities for the purpose of:

(i) the operation of a nursery or Christmas tree farm;

(ii) the harvest of Christmas trees;

(iii) the harvest of firewood; or

(iv) the cutting of trees for personal use by an owner or operator.

(5) "Operator" means a person responsible for conducting forest practices. An operator may be the owner, the owner's agent, or a person who, through contractual agreement with the landowner, is obligated to or entitled to conduct forest practices or to carry out a timber sale.

(6) "Owner" means the person, firm, association, or corporation having the actual, beneficial ownership of forest land or timber other than an easement, right-of-way, or mineral reservation.

(7) "Person" means an individual, corporation, partnership, or association of any kind.

(8) "Recognized agency" means an agency organized for the purpose of providing fire protection and recognized by the department as giving adequate fire protection to lands in accordance with rules adopted by the department.

(9) "Timber sale" means a series of forest practices designed to access, harvest, and regenerate trees on a defined land area.

(10) "Unmanned aerial vehicle" means an aircraft that is operated without direct human intervention from, on, or within the aircraft.

(11) "Unmanned aerial vehicle system" means the entire system used to operate an unmanned aerial vehicle, including:

(a) the unmanned aerial vehicle;

(b) communications equipment;

(c) navigation equipment;

(d) controllers;

(e) support equipment; and

(f) autopilot functionality.

(12) "Wildfire" means an unplanned, unwanted fire burning uncontrolled on wildland and consuming vegetative fuels.

(13) "Wildfire season" means the period of each year beginning May 1 and ending September 30, inclusive.

(14) "Wildfire suppression activities" means any action, response, or effort by a recognized agency to contain, extinguish, or suppress a wildfire.

(15) "Wildland" means an area in which development is essentially nonexistent, except for roads, railroads, powerlines, and similar facilities, and in which structures, if any, are widely scattered.

(16) "Wildland fire" means a fire burning uncontrolled on forest lands.

(17) "Wildland fire protection" means the work of prevention, detection, and suppression of wildland fires and includes training required to perform those functions.

(18) "Wildland fire protection district" means a definite land area, the boundaries of which are fixed and in which wildland fire protection is provided through the medium of an agency recognized by the department.

(19) "Wildland-urban interface" means the line, area, or zone where structures and other human development meet or intermingle with undeveloped wildland or vegetative fuels.

History: En. Sec. 3, Ch. 128, L. 1939; amd. Sec. 1, Ch. 216, L. 1955; amd. Sec. 1, Ch. 93, L. 1959; amd. Sec. 1, Ch. 30, L. 1971; amd. Sec. 2, Ch. 253, L. 1974; amd. Sec. 1, Ch. 397, L. 1977; R.C.M. 1947, 28-103(part); amd. Secs. 1, 2, Ch. 529, L. 1981; amd. Sec. 2, Ch. 423, L. 1989; amd. Sec. 262, Ch. 418, L. 1995; amd. Sec. 2, Ch. 27, L. 1997; amd. Sec. 4, Ch. 336, L. 2007; amd. Sec. 1, Ch. 662, L. 2023.

76-13-103. Applicability. Part 2 and this part apply to all state and private lands within this state that are susceptible to wildfire, as determined by the department.

History: En. Sec. 4, Ch. 128, L. 1939; amd. Sec. 3, Ch. 141, L. 1941; amd. Sec. 1, Ch. 94, L. 1959; amd. Sec. 3, Ch. 253, L. 1974; R.C.M. 1947, 28-104(2); amd. Sec. 3, Ch. 27, L. 1997; amd. Sec. 5, Ch. 336, L. 2007.

76-13-104. Functions of department — rulemaking. (1) (a) The department has the duty to ensure the protection of land under state and private ownership and to suppress wildfires on land under state and private ownership. Fees may not be collected for this purpose except fees provided for in 76-13-201.

(b) The department may engage in wildfire initial attack on all lands if the fire threatens to move onto state or private land.

(2) (a) The department shall adopt rules to protect the natural resources of the state, especially the natural resources owned by the state, from destruction by fire and for that purpose, in declared emergencies, may employ personnel and incur other expenses when necessary.

(b) The department may adopt and enforce reasonable rules for the purpose of enforcing and accomplishing the provisions and purposes of part 2 and this part.

(3) The duty imposed on the department under this section is not exclusive to the department and does not absolve private property owners or local governmental fire agencies organized under Title 7, chapter 33, from any fire protection or suppression responsibilities.

(4) The department may give technical and practical advice concerning forest, range, water, and soil conservation and the establishment and maintenance of woodlots, windbreaks, shelterbelts, and fire protection.

(5) The department shall cooperate with all public and other agencies in the development, protection, and conservation of the forest, range, and water resources in this state.

(6) The department shall establish and maintain wildland fire control training programs.

(7) The department shall appoint firewardens in the number and localities that it considers necessary and shall adopt rules prescribing the qualifications and duties of firewardens that are in addition to those provided in 76-13-116.

(8) The department shall adopt rules addressing development within the wildland-urban interface, including but not limited to:

(a) best practices for development within the wildland-urban interface; and

(b) criteria for providing grant and loan assistance to local government entities to encourage adoption of best practices for development within the wildland-urban interface.

(9) (a) The department shall establish a good neighbor policy that would allow the department to enter into a cooperating and coordinating agreement or contract that authorizes the state forester to engage in forest management and education activities to:

(i) reduce wildland fire risk and intensity on federal land designated as wildland-urban interface under 76-13-145; and

(ii) take advantage of federal authority that promotes sustainable forest management.

(b) Forest management activities to reduce wildland fire risk and intensity included in the good neighbor policy must include the authority to:

(i) treat insect-infested trees;

(ii) reduce hazardous fuels; and

(iii) conduct any other activities to improve the overall diversity and vigor of forested landscapes.

(10) The department has the authority to intervene in litigation or appeals on federal forest management projects that involve reduction of hazardous fuels or other activities to mitigate the risk of wildland fire in the wildland-urban interface.

History: En. Sec. 6, Ch. 128, L. 1939; amd. Sec. 5, Ch. 253, L. 1974; amd. Sec. 3, Ch. 397, L. 1977; R.C.M. 1947, 28-106(1), (4), (6); amd. Sec. 4, Ch. 529, L. 1981; amd. Sec. 3, Ch. 423, L. 1989; amd. Sec. 34, Ch. 336, L. 2007; amd. Sec. 1, Ch. 172, L. 2009; amd. Sec. 2, Ch. 206, L. 2013; amd. Sec. 1, Ch. 401, L. 2013; amd. Sec. 2, Ch. 437, L. 2017.

Cross-References

Exchange of timbered, cut-over, or burned-over lands, 77-2-211.

76-13-105. Protection of lands and improvements from fire. (1) Nonforest lands and improvements may be protected by the department when requested by the landowner at rates determined by the department in those areas where a recognized agency is available.

(2) Land classified as forest land under 76-13-107 that is within a wildland fire protection district, as provided in 76-13-204, or that is otherwise under contract for fire protection by a recognized agency must be protected as provided in 76-13-201 and 76-13-207.

(3) Private and public land, whether classified as forest land or otherwise, that is not within a wildland fire protection district or under the protection of a recognized agency or a municipality must be protected by a county as provided in 7-33-2202. The county governing body shall either provide direct protection, as provided in 7-33-2202(4), or it shall enter into an agreement for protection with a recognized agency.

History: En. Sec. 6, Ch. 128, L. 1939; amd. Sec. 5, Ch. 253, L. 1974; amd. Sec. 3, Ch. 397, L. 1977; R.C.M. 1947, 28-106(5); amd. Sec. 8, Ch. 336, L. 2007.

76-13-106. Repealed. Sec. 30, Ch. 336, L. 2007.

History: En. Sec. 22, Ch. 128, L. 1939; amd. Sec. 15, Ch. 253, L. 1974; amd. Sec. 10, Ch. 397, L. 1977; R.C.M. 1947, 28-122; amd. Sec. 5, Ch. 529, L. 1981.

76-13-107. Classification of forest lands. The department may classify the forest land areas of the state for which conservation and fire protection measures are reasonably required and change or modify the classification from time to time as in its judgment is proper.

History: En. Sec. 6, Ch. 128, L. 1939; amd. Sec. 5, Ch. 253, L. 1974; amd. Sec. 3, Ch. 397, L. 1977; R.C.M. 1947, 28-106(3).

76-13-108. Person responsible for performance of duties. (1) If the owner does not appear upon the public records as the holder of the legal title to the land or timber, the owner is nevertheless primarily responsible for the performance of the acts and duties imposed upon the owner by part 2 and this part.

(2) When the owner of the timber is not the owner of the land, the primary responsibility for the performance of the acts and duties imposed by part 2 and this part is upon the owner of the timber.

(3) When the state has title to forest lands within an organized forest protection district, it must be considered as an owner and it shall list its lands and pay the assessments to the recognized agencies responsible for lands in organized forest protection districts.

History: (1), (2)En. Sec. 4, Ch. 128, L. 1939; amd. Sec. 3, Ch. 141, L. 1941; amd. Sec. 1, Ch. 94, L. 1959; amd. Sec. 3, Ch. 253, L. 1974; Sec. 28-104, R.C.M. 1947; (3)En. Sec. 8, Ch. 128, L. 1939; Sec. 28-108, R.C.M. 1947; R.C.M. 1947, 28-104(1), 28-108; amd. Sec. 2521, Ch. 56, L. 2009.

76-13-109. Repealed. Sec. 30, Ch. 336, L. 2007.

History: En. Sec. 5, Ch. 128, L. 1939; amd. Sec. 1, Ch. 90, L. 1959; amd. Sec. 1, Ch. 83, L. 1963; amd. Sec. 1, Ch. 149, L. 1967; amd. Sec. 4, Ch. 253, L. 1974; amd. Sec. 2, Ch. 397, L. 1977; R.C.M. 1947, 28-105(2); amd. Sec. 6, Ch. 529, L. 1981; amd. Sec. 4, Ch. 27, L. 1997.

76-13-110. Owner's right to department hearing. (1) An owner of forest land is entitled to a hearing before the department, after a request for a hearing, on any subject pertaining to the activities of the department or any recognized agency as agent of the department affecting the owner's property. A request for a hearing before the department may not have the effect of suspending the operations of the department or any agent of the department undertaken pursuant to this chapter, but upon the hearing, the department may terminate those operations if found unreasonable.

(2) A hearing pertaining to costs charged against the forest land of an owner for protection, as provided in 76-13-201, must be requested on or before August 15 each year.

History: En. Sec. 4, Ch. 141, L. 1941; amd. Sec. 20, Ch. 253, L. 1974; amd. Sec. 11, Ch. 397, L. 1977; R.C.M. 1947, 28-129; amd. Sec. 9, Ch. 336, L. 2007.

76-13-111. Permissible expenditures. (1) The following funds may be expended as directed by the department for fire prevention, detection, and suppression and for forest range, water, and soil conservation:

(a) all moneys collected by county treasurers as assessments on forest lands for forest protection;

(b) moneys collected for the abatement of public nuisances;

(c) all fines collected, except those collected in a justice's court, for violations of this part or part 2;

(d) the state's share of the cooperative fire protection funds allocated by the federal government;

(e) any other funds provided for the purposes herein indicated.

(2) All other cooperative funds collected, appropriated, or allocated for the use of the department, including funds for the removal of slash hazards resulting from logging or other wood operations on state and private forest lands, those provided for the purpose of helping to maintain the maximum productivity of the forests of the state, those provided for purposes designed to assist the farmers of the state in the establishment of windbreaks and woodlots in localities where those forest plantings are helpful, and funds for other cooperative work, may not be expended except for the specific purposes for which they were collected, appropriated, or allocated.

History: En. Sec. 23, Ch. 128, L. 1939; amd. Sec. 217, Ch. 147, L. 1963; amd. Sec. 2, Ch. 30, L. 1971; amd. Sec. 16, Ch. 253, L. 1974; R.C.M. 1947, 28-123; amd. Sec. 47, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

76-13-112. Penalty for violation. (1) Unless otherwise provided by this part or part 2, a person who violates this part or part 2 or any rule adopted pursuant to this part or part 2 is guilty of a misdemeanor and shall be punished by a fine of not more than $500 or imprisonment in a county jail for not more than 6 months or both.

(2) Actions to prosecute criminal violations of this part or part 2 or any rule adopted pursuant to this part or part 2 must be conducted by the city attorney, county attorney, or attorney general.

History: En. Sec. 27, Ch. 128, L. 1939; amd. Sec. 19, Ch. 253, L. 1974; R.C.M. 1947, 28-127; amd. Sec. 5, Ch. 27, L. 1997; amd. Sec. 2, Ch. 662, L. 2023.

76-13-113. Destruction of signs. Any person who shall destroy, deface, remove, injure, or disfigure any sign, placard, proclamation, order, warning, or notice issued by any federal, state, or forest protection agency under the provisions of this part or part 2 and erected or posted at any point in the state shall be guilty of a misdemeanor.

History: En. Sec. 20, Ch. 128, L. 1939; R.C.M. 1947, 28-120.

76-13-114. Disposition of fines. Fines collected in a court of the state under part 2 or this part, except those collected in a justice's court, must be transferred to the department of revenue for deposit in the state special revenue fund. When a person is convicted in any court of a violation of part 2 or this part, the court may levy and collect as costs in the case the amount necessary to compensate the county for the expenditures made in and for the prosecution of the offender. These costs when collected, except those collected in a justice's court, must be deposited by the court with the proper county treasurer for the benefit of the county.

History: En. Sec. 21, Ch. 128, L. 1939; amd. Sec. 14, Ch. 253, L. 1974; R.C.M. 1947, 28-121; amd. Sec. 34, Ch. 281, L. 1983; amd. Sec. 48, Ch. 557, L. 1987; amd. Sec. 38, Ch. 532, L. 1997; amd. Sec. 39, Ch. 257, L. 2001.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

76-13-115. State fire policy. The legislature finds and declares that:

(1) the safety of the public and of firefighters is paramount in all wildfire suppression activities;

(2) it is a priority to minimize property and resource loss resulting from wildfire and to minimize expense to Montana taxpayers, which is generally accomplished through an aggressive and rapid initial attack effort;

(3) interagency cooperation and coordination among local, state, and federal agencies are intended and encouraged, including cooperation when restricting activity or closing areas to access becomes necessary;

(4) fire prevention, hazard reduction, and loss mitigation are fundamental components of this policy;

(5) all property in Montana has wildfire protection from a recognized fire protection entity;

(6) the department has a duty to engage in wildfire suppression activities in the state regardless of land ownership if the department determines that the federal wildfire suppression activities within 5 miles of department or county wildland fire protection are not consistent with 76-13-104. The department may, at its sole discretion, bill the responsible recognized federal protection agency for costs incurred in suppression when appropriate.

(7) all private property owners and federal and state public land management agencies have a responsibility to manage resources, mitigate fire hazards, and otherwise prevent fires on their property;

(8) sound forest management activities to reduce fire risk, such as thinning, prescribed burning, and insect and disease treatments, improve the overall diversity and vigor of forested landscapes and improve the condition of related water, wildlife, recreation, and aesthetic resources;

(9) development of fire protection guidelines for the wildland-urban interface is critical to improving public safety and for reducing risk and loss; and

(10) catastrophic wildland fire in wildland-urban interface areas resulting from inadequate federal land management activities to reduce fire risk has the potential to jeopardize Montanans' inalienable right to a clean and healthful environment guaranteed in Article II, section 3, of the Montana constitution.

History: En. Sec. 1, Ch. 336, L. 2007; amd. Sec. 3, Ch. 401, L. 2013; amd. Sec. 1, Ch. 233, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 233, L. 2025. Amendment effective May 1, 2025.

76-13-116. Duties of firewardens — liability. (1) In addition to the duties prescribed by rule pursuant to 76-13-104(7), a firewarden appointed by the department shall promptly report all fires to the department, take immediate and active steps toward their extinguishment, report any violation of the provisions of Title 76, chapter 13, parts 1 and 2, and assist in apprehending and convicting offenders.

(2) A firewarden is not liable for civil action for trespass committed in the discharge of the firewarden's duties, and the provisions of 45-6-203 do not apply to a firewarden acting within the course and scope of the firewarden's duties.

(3) A firewarden who has information that shows, with reasonable certainty, that a person has violated any provision of Title 76, chapter 13, parts 1 and 2, shall immediately take action against the offender by making a complaint before the appropriate authority or by providing information to the appropriate county attorney and shall obtain all possible evidence pertaining to the violation.

History: En. Sec. 7, Ch. 336, L. 2007.

76-13-117. Terminated. Sec. 6, Ch. 425, L. 2015.

History: En. Sec. 1, Ch. 425, L. 2015.

76-13-118. Terminated. Sec. 6, Ch. 425, L. 2015.

History: En. Sec. 2, Ch. 425, L. 2015.

76-13-119. Exemption from environmental review. The department is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when granting federal, state, or private funds for authorized grant activities on private, county, or municipal lands to conserve habitat, reduce wildfire risk, or improve forest health.

History: En. Sec. 1, Ch. 169, L. 2021.

76-13-120 reserved.

76-13-121. *(Temporary)* **Permit for burning required.** (1) During the wildfire season or an expansion of the wildfire season, a person may not ignite or set a fire, including a slash-burning fire, land-clearing fire, debris-burning fire, or, except as provided in subsection (2), an open fire without an official written permit to ignite or set the fire from the recognized agency for that protection area.

(2) (a) If no restrictions are in place, a permit is not needed for recreational fires measuring less than 48 inches in diameter that are surrounded by a nonflammable area or structure and for which a suitable source of extinguishing the fire is available.

(b) A recreational fire may not be ignited if special restrictions prohibiting recreational fires have been established by an authority having jurisdiction.

76-13-121. *(Effective on occurrence of contingency)* **Permit for burning required.** (1) (a) A person may not conduct a prescribed fire, as defined in 76-13-903, without an official written permit to ignite or set the prescribed fire from the recognized agency for that protection area.

(b) During the wildfire season or an expansion of the wildfire season, a person may not ignite or set a fire, including a slash-burning fire, land-clearing fire, debris-burning fire, or, except as provided in subsection (2), an open fire without an official written permit to ignite or set the fire from the recognized agency for that protection area.

(2) (a) If no restrictions are in place, a permit is not needed for recreational fires measuring less than 48 inches in diameter that are surrounded by a nonflammable area or structure and for which a suitable source of extinguishing the fire is available.

(b) A recreational fire may not be ignited if special restrictions prohibiting recreational fires have been established by an authority having jurisdiction.

History: **En. Sec. 14, Ch. 128, L. 1939; amd. Sec. 11, Ch. 253, L. 1974; amd. Sec. 7, Ch. 397, L. 1977; R.C.M. 1947, 28-114; amd. Sec. 10, Ch. 336, L. 2007; amd. Sec. 11, Ch. 635, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 11, Ch. 635, L. 2025. Amendment effective on occurrence of contingency.

Contingent Effective Date: Section 14, Ch. 635, L. 2025, provided in subsection (2) that the Ch. 635 amendments to this section are effective after legislative appropriation of funds to the prescribed fire manager certification claims special revenue account in 76-13-907 and that the department of natural resources and conservation shall submit certification of the appropriation to the Code Commissioner within 15 days of the occurrence of the contingency.

76-13-122. Failure to comply with permit. A person to whom a written permit is issued to set or ignite a fire shall comply strictly with the permit. Except as provided in 76-13-905, a person who fails to comply with the permit, leaves the fire unattended, leaves the fire before it is totally extinguished, or negligently allows the fire to spread from or beyond the burning area defined by the permit is subject to the penalty provided in 50-63-102 and is subject to the provisions of 50-63-103. The department shall prescribe the form and substance of the permit.

History: **En. Sec. 16, Ch. 128, L. 1939; amd. Sec. 12, Ch. 253, L. 1974; R.C.M. 1947, 28-116; amd. Sec. 11, Ch. 336, L. 2007; amd. Sec. 12, Ch. 635, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 12, Ch. 635, L. 2025. Amendment effective May 12, 2025.

Cross-References

Penalty for misdemeanor, 46-18-212.

76-13-123. Failure to extinguish recreational fire. A person who fails to extinguish a recreational fire that the person has set or ignited or in which the person has been left in charge or who negligently allows the fire to spread from the area described in 76-13-121 is subject to the penalty provided in 50-63-102 and is subject to the provisions of 50-63-103.

History: **En. Sec. 15, Ch. 128, L. 1939; R.C.M. 1947, 28-115; amd. Sec. 12, Ch. 336, L. 2007; amd. Sec. 109, Ch. 2, L. 2009.**

Cross-References

Penalty for misdemeanor, 46-18-212.

Penalty for setting or leaving fire causing damage, 50-63-102.

Liability of offender for damages and costs, 50-63-103.

76-13-124. Throwing lighted materials. A person who throws or places any lighted material or flaming or glowing substance that may start a fire is subject to the penalty provided in 50-63-102 and is subject to the provisions of 50-63-103.

History: **En. Sec. 17, Ch. 128, L. 1939; amd. Sec. 8, Ch. 397, L. 1977; R.C.M. 1947, 28-117; amd. Sec. 13, Ch. 336, L. 2007.**

76-13-125. Spark arresters required. A person may not use, drive, or operate within any wildland an internal combustion engine that is not equipped with a modern, efficient, and adequate spark arrester to prevent the escape of sparks, coals, cinders, and other burning material from the exhaust of the engine.

History: **En. Sec. 18, Ch. 128, L. 1939; amd. Sec. 9, Ch. 397, L. 1977; R.C.M. 1947, 28-118; amd. Sec. 14, Ch. 336, L. 2007.**

76-13-126. Restrictions on mill waste. (1) Before each wildfire season, all persons, firms, or corporations creating or responsible for mill waste within forest areas shall treat, dispose of, remove, or reduce the hazards created so that the accumulation of the waste does not constitute a fire hazard.

(2) A sawmill located within or contiguous to forest lands may not accumulate in one pile sawdust in excess of an amount resulting from the sawing of 500,000 feet log scale of sawlogs. However, a larger sawdust pile may be accumulated when there is no reasonable danger of fire from the sawdust pile and a permit for the additional accumulation is granted by the department. If burning is the disposal method elected, each sawdust pile must be prepared for burning by cribbing the base of each pile with slabs and must be burned in accordance with rules adopted by the department.

History: **En. Sec. 19, Ch. 128, L. 1939; amd. Sec. 1, Ch. 222, L. 1955; amd. Sec. 1, Ch. 195, L. 1969; amd. Sec. 13, Ch. 253, L. 1974; R.C.M. 1947, 28-119; amd. Sec. 15, Ch. 336, L. 2007.**

76-13-127 through 76-13-130 reserved.

76-13-131. Renumbered 76-13-420. Sec. 32(3), Ch. 336, L. 2007.

76-13-132. Renumbered 76-13-421. Sec. 32(3), Ch. 336, L. 2007.

76-13-133. Renumbered 76-13-422. Sec. 32(3), Ch. 336, L. 2007.

76-13-134. Renumbered 76-13-423. Sec. 32(3), Ch. 336, L. 2007.

76-13-135. Renumbered 76-13-424. Sec. 32(3), Ch. 336, L. 2007.

76-13-136. Cooperative agreements with owners and lessees of land for fire protection and conservation. (1) For the purpose of more adequately promoting and facilitating cooperation, financial and otherwise, between the state and all of the public and private agencies, the department of natural resources and conservation may cooperate with owners or lessees of farm, range, forest, watershed, or other uncultivated lands in private and public ownership for the protection from fire of the cultivated agricultural crops or natural resources existing or growing on the land and also in the conservation and perpetuation of the lands and resources, including the prevention of soil erosion and the regulation of stream flow.

(2) The state treasurer may receive money that may be appropriated or allotted for the purposes listed in subsection (1) by the state, counties, municipalities, the United States government or any department of the federal government, or other organization or individual.

History: **(1)En. Sec. 9, Ch. 179, L. 1925; re-en. Sec. 1830.9, R.C.M. 1935; amd. Sec. 1, Ch. 193, L. 1947; amd. Sec. 101, Ch. 253, L. 1974; Sec. 81-1409, R.C.M. 1947; (2)En. Sec. 10, Ch. 179, L. 1925; re-en. Sec. 1830.10, R.C.M. 1935; amd; Sec. 216, Ch. 147, L. 1963; Sec. 81-1410, R.C.M. 1947; R.C.M. 1947, 81-1409, 81-1410; amd. Sec. 1, Ch. 529, L. 1981; amd. Sec. 260, Ch. 418, L. 1995; Sec. 76-11-102, MCA 2005; redes. 76-13-136 by Sec. 32(2), Ch. 336, L. 2007.**

76-13-137 through 76-13-139 reserved.

76-13-140. Legal representation for state firefighters. (1) The department shall pay reasonable attorney fees and costs for outside legal counsel to defend a firefighter employed by the department against a criminal prosecution for a good faith act or omission by the firefighter arising from the firefighter's performance of duties during a wildfire. The department may determine whether the firefighter's act or omission was in good faith and arising from the performance of the firefighter's duties during a wildfire. The requirement to pay attorney fees and costs does not apply to any postconviction legal proceedings.

(2) The department shall adopt rules to implement this section.

History: **En. Sec. 2, Ch. 464, L. 2007.**

76-13-141 through 76-13-144 reserved.

76-13-145. Designation of wildland-urban interface parcels. (1) Subject to the provisions of this section, the department shall identify the parcels of property in the state that are considered to be wildland-urban interface parcels, delineate those parcels on maps, and ensure that the maps and information on the maps are available to the public, local governing bodies, and governmental fire agencies organized under Title 7, chapter 33.

(2) (a) Except as provided in subsection (2)(b), the department shall identify a county's wildland-urban interface parcels based on the wildland-urban interface designation developed as part of the county's completion of a community wildfire protection plan under 16 U.S.C. 6501, et seq., the Healthy Forests Restoration Act of 2003.

(b) If a community wildfire protection plan has not been adopted, the department shall:

(i) provide notice to the county governing body that the department intends to designate the wildland-urban interface within the county's jurisdictional boundary;

(ii) allow up to 18 months for the county to complete and adopt a community wildfire protection plan if a county had begun the process of developing a plan prior to receiving the notice from the department under subsection (2)(b)(i);

(iii) review and consider the analysis of the potential for fire and wildland fire in the county's growth policy, as required in 76-1-601(3)(j) if a growth policy has been adopted;

(iv) consult with the county governing body and governmental fire agencies organized under Title 7, chapter 33, regarding appropriate parcels to designate as wildland-urban interface parcels; and

(v) clearly identify and make available to the county governing body and governmental fire agencies the criteria the department intends to use in designating parcels.

(3) Location of a property within the wildland-urban interface designated under this section may not be the sole reason for assessing additional fire protection fees, impact fees, or other fees against the property.

(4) The department shall review each county's wildland-urban interface designation every 5 years, make changes as necessary, and maintain accurate maps and other identifying information.

History: En. Sec. 1, Ch. 397, L. 2009; amd. Sec. 1, Ch. 24, L. 2013.

Cross-References

Fire protection, Title 7, ch. 33.
Growth policy — contents, 76-1-601.

76-13-146 through 76-13-149 reserved.

76-13-150. Fire suppression account — fund transfer. (1) There is a fire suppression account in the state special revenue fund to the credit of the department.

(2) The legislature may transfer money from other funds to the account, and the money in the account is subject to legislative fund transfers.

(3) Funds received for restitution by private parties must be deposited in the account.

(4) Money in the account may be used only for:

(a) fire suppression costs;

(b) fuel reduction and mitigation;

(c) forest restoration;

(d) grants for the purchase of fire suppression equipment for county cooperatives;

(e) forest management projects on federal land;

(f) support for collaborative groups that include at least one representative of an affected county commission that is engaged with a federal forest project and for local governments engaged in litigation related to federal forest projects;

(g) road maintenance on federal lands; and

(h) fire preparedness.

(5) In an even-numbered calendar year, after the transfers made pursuant to 17-7-130, if the preliminary general fund ending balance at fiscal yearend was greater than 8.3% of all general revenue appropriations in the second year of the biennium, then the state treasurer shall transfer from the general fund to the fire suppression account funds sufficient to bring the fire suppression account fund balance to 6% of the general revenue appropriations in the second year of the biennium. The transfer may not cause the general fund ending fund balance to have a balance of less than 8.3% of all general revenue appropriations in the second year of the biennium.

(6) The provisions of subsection (5) do not apply in a fiscal year in which reductions required by 17-7-140 occur or if a transfer pursuant to subsection (5) would require reductions pursuant to 17-7-140.

(7) If the balance in the account at the end of the most recently completed odd-numbered fiscal year exceeds 3% of all general revenue appropriations in the second year of the biennium, then up to 1% of all general revenue appropriations in the second year of the biennium may be used and is statutorily appropriated from the fire suppression account for the purposes in subsections (4)(b) through (4)(g). Of that amount, no more than 5% may be used for the purposes of subsection (4)(f).

(8) Up to 0.5% of all general revenue appropriations in the second year of the biennium is statutorily appropriated from the fire suppression account each year and may be used each year to the department for the item in subsection (4)(h).

(9) Money in the account is statutorily appropriated, as provided in 17-7-502, to the department for the purposes described in subsection (4).

History: En. Sec. 1, Ch. 2, Sp. L. September 2007; amd. Sec. 2, Ch. 441, L. 2009; amd. Sec. 10, Ch. 312, L. 2011; amd. Sec. 4, Ch. 368, L. 2013; amd. Sec. 5, Ch. 115, L. 2017; amd. Secs. 29, 30, Ch. 429, L. 2017; amd. Sec. 4, Ch. 740, L. 2023; amd. Sec. 1, Ch. 194, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 194, L. 2025. Amendment effective April 17, 2025.

76-13-151. Good neighbor forestry accounts — uses. (1) There are good neighbor forestry special revenue accounts administered by the department within the state special revenue fund and the federal special revenue fund established in 17-2-102.

(2) (a) All state proceeds allocated or budgeted for the purposes of the good neighbor policy established pursuant to 76-13-104 must be deposited in the state special revenue account provided for in subsection (1) of this section.

(b) Money received by the state in the form of gifts, grants, reimbursements, or allocations from any source intended to be used for the purposes of the good neighbor policy established pursuant to 76-13-104 must be deposited in the appropriate account provided for in subsection (1) of this section.

(c) Federal funds received by the state through good neighbor agreements with the federal government must be deposited in the federal special revenue account provided for in subsection (1) to be used for the purposes of the good neighbor policy established pursuant to 76-13-104.

(3) Funds in the accounts are statutorily appropriated, as provided in 17-7-502, to the department only to carry out the provisions of the good neighbor policy established pursuant to 76-13-104.

History: En. Sec. 1, Ch. 437, L. 2017; amd. Sec. 2, Ch. 376, L. 2019.

76-13-152. Report by department of natural resources and conservation. By November 1 of each fiscal year, the department of natural resources and conservation shall report in accordance with 5-11-210 to the natural resources and transportation budget committee provided for in 5-12-501 on the expenditures made pursuant to each subsection of 76-13-150(4) for that fiscal year.

History: En. Sec. 2, Ch. 194, L. 2025.

Compiler's Comments

Effective Date: Section 4, Ch. 194, L. 2025, provided: "[This act] is effective on passage and approval." Approved April 17, 2025.

76-13-153 reserved.

76-13-154. Federal forest management projects — attorney general authority to intervene. (1) The attorney general has the authority to intervene in litigation or appeals on federal forest management projects.

(2) The authority provided in subsection (1) includes the authority to:

(a) fulfill the purposes of Title 76, chapter 13, to intervene in litigation or appeals on federal forest management projects that could affect watershed protection or restoration; and

(b) intervene in litigation involving projects that lie within a landscape-scale insect and disease area designated by the U.S. department of agriculture pursuant to the Healthy Forests Restoration Act of 2003 and the Agricultural Act of 2014.

History: En. Sec. 5, Ch. 401, L. 2013; amd. Sec. 1, Ch. 278, L. 2015.

Part 2
Provision of Fire Protection Services

76-13-201. Costs for protection from fire. (1) An owner of land classified as forest land that is within a wildland fire protection district or that is otherwise under contract for fire protection by a recognized agency is subject to the fees for fire protection provided in this section.

(2) The department shall provide fire protection to the land described in subsection (1) at a cost to the landowner of not more than $58.70 for each landowner in the protection district and of not more than an additional 49 cents per acre per year for each acre in excess of 20 acres owned by each landowner in each protection district, as necessary to yield the amount of money provided for in 76-13-207. Assessment, payment, and collection of the fire protection costs must be in accordance with 76-13-207.

(3) Other charges may not be assessed to a participating landowner except in cases of proved negligence on the part of the landowner or the landowner's agent or in the event of a violation of 50-63-103.

History: En. Sec. 9, Ch. 128, L. 1939; amd. Sec. 2, Ch. 141, L. 1941; amd. Sec. 1, Ch. 188, L. 1955; amd. Sec. 1, Ch. 91, L. 1959; amd. Sec. 1, Ch. 148, L. 1967; amd. Sec. 1, Ch. 252, L. 1974; amd. Sec. 6, Ch. 253, L. 1974; amd. Sec. 4, Ch. 397, L. 1977; R.C.M. 1947, 28-109; amd. Sec. 1, Ch. 643, L. 1985; amd. Sec. 1, Ch. 360, L. 1991; amd. Sec. 6, Ch. 27, L. 1997; amd. Sec. 195, Ch. 574, L. 2001; amd. Sec. 17, Ch. 336, L. 2007; amd. Sec. 1, Ch. 334, L. 2015; amd. Sec. 1, Ch. 655, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 655, L. 2025. Amendment effective July 1, 2025.

76-13-202. Means by which department may provide protection. The department may provide for wildfire protection of any wildlands through the department or by contract or any other feasible means, in cooperation with any federal, state, or other recognized agency.

History: En. Sec. 6, Ch. 128, L. 1939; amd. Sec. 5, Ch. 253, L. 1974; amd. Sec. 3, Ch. 397, L. 1977; R.C.M. 1947, 28-106(2); amd. Sec. 18, Ch. 336, L. 2007.

76-13-203. Extension of wildfire season. In the event of excessive or great fire danger, the wildfire season defined in 76-13-102 may be expanded when in the judgment of the department dangerous fire conditions exist. When expanded, the department shall give public notice.

History: En. Sec. 3, Ch. 128, L. 1939; amd. Sec. 1, Ch. 216, L. 1955; amd. Sec. 1, Ch. 93, L. 1959; amd. Sec. 1, Ch. 30, L. 1971; amd. Sec. 2, Ch. 253, L. 1974; amd. Sec. 1, Ch. 397, L. 1977; R.C.M. 1947, 28-103(part); amd. Sec. 19, Ch. 336, L. 2007; amd. Sec. 3, Ch. 662, L. 2023.

76-13-204. Creation, annexation of land into, and dissolution of wildland fire protection districts. (1) In accordance with the provisions of subsections (2) and (3), the department may create, annex land to, or dissolve wildland fire protection districts.

(2) Before a district is created, land is annexed into a district, or a district is dissolved, the department shall hold a hearing in any county in which land affected by the proposed change is located.

(a) The department shall give notice at least 20 days in advance of the hearing to all property owners to be affected by the proposed change. Service of the notice must be made by certified mail to each affected property owner and by publication of the notice in a newspaper published or generally circulated in the county in which the hearing is to be held.

(b) The department shall consider the arguments made for and against the proposed change in making a determination under this section.

(3) (a) A wildland fire protection district may not be created or dissolved unless approved in writing by a vote of not less than 51% of the owners representing at least 51% of the acreage to be involved in the affected wildland fire protection district.

(b) Land may not be annexed into a district unless approved by 51% of the owners representing at least 51% of the acreage to be annexed.

(4) Land annexed into a district may not be removed from that district unless that district is dissolved.

History: En. Sec. 5, Ch. 128, L. 1939; amd. Sec. 1, Ch. 90, L. 1959; amd. Sec. 1, Ch. 83, L. 1963; amd. Sec. 1, Ch. 149, L. 1967; amd. Sec. 4, Ch. 253, L. 1974; amd. Sec. 2, Ch. 397, L. 1977; R.C.M. 1947, 28-105(1); amd. Sec. 1, Ch. 147, L. 1993; amd. Sec. 7, Ch. 27, L. 1997; amd. Sec. 20, Ch. 336, L. 2007.

76-13-205. Determination of boundaries of district. In establishing boundaries of organized wildland fire protection districts, the department may for the purpose of administrative convenience designate recognizable landmarks as boundaries.

History: En. Sec. 10, Ch. 128, L. 1939; amd. Sec. 1, Ch. 92, L. 1959; amd. Sec. 7, Ch. 253, L. 1974; amd. Sec. 5, Ch. 397, L. 1977; R.C.M. 1947, 28-110(2); amd. Sec. 8, Ch. 27, L. 1997; amd. Sec. 21, Ch. 336, L. 2007.

76-13-206. What constitutes compliance with duty to protect against fire. An owner of land within an organized wildland fire protection district while a member of or while participating in a recognized agency for wildland fire protection or within areas protected by a county must be considered to have fully complied with the requirements of 76-13-212.

History: En. Sec. 10, Ch. 128, L. 1939; amd. Sec. 1, Ch. 92, L. 1959; amd. Sec. 7, Ch. 253, L. 1974; amd. Sec. 5, Ch. 397, L. 1977; R.C.M. 1947, 28-110(1); amd. Sec. 22, Ch. 336, L. 2007.

76-13-207. Determination and collection of costs of fire protection. (1) The department shall prepare an annual operation assessment plan in which fire protection costs are determined. The department shall request the legislature to appropriate the state's portion of the cost. After the appropriation is made by the legislature, the department shall cause an assessment to be made on the owners of land, as specified in 76-13-105 and 76-13-201, sufficient to bring the total amount received from the landowners to no greater than one-third of the amount specified in the appropriation.

(2) On or before the first Tuesday in September of each year, the department shall certify in writing to the department of revenue the names of these owners of lands in each county, together with a description of their lands and a statement of the amount found to be due and owing by each of the owners to the department for wildland fire protection.

(3) Upon receiving the certificate from the department showing the amount due, the department of revenue shall extend the amounts upon the county tax rolls covering the lands, and the sums become obligations of the owner, to be paid and collected in the same manner and at the same time and subject to the same penalties as general state and county taxes upon the same property are collected.

History: En. Sec. 11, Ch. 128, L. 1939; amd. Sec. 1, Ch. 95, L. 1959; amd. Sec. 215, Ch. 147, L. 1963; amd. Sec. 8, Ch. 253, L. 1974; amd. Sec. 1, Ch. 110, L. 1977; amd. Sec. 6, Ch. 397, L. 1977; R.C.M. 1947, 28-111(part); amd. Sec. 2, Ch. 643, L. 1985; amd. Sec. 138, Ch. 27, Sp. L. November 1993; amd. Sec. 23, Ch. 336, L. 2007.

76-13-208. Nature of assessments for wildland fire protection. All payments required of landowners by part 1 and this part are assessments for benefits actually received by those owners in the protection of their lands and are not a tax upon the property of the owners.

History: En. Sec. 11, Ch. 128, L. 1939; amd. Sec. 1, Ch. 95, L. 1959; amd. Sec. 215, Ch. 147, L. 1963; amd. Sec. 8, Ch. 253, L. 1974; amd. Sec. 1, Ch. 110, L. 1977; amd. Sec. 6, Ch. 397, L. 1977; R.C.M. 1947, 28-111(3); amd. Sec. 24, Ch. 336, L. 2007.

76-13-209. Disposition of assessments. Money collected by the county treasurer pursuant to 76-13-207 must be remitted to the state for deposit in the state special revenue fund.

History: En. Sec. 11, Ch. 128, L. 1939; amd. Sec. 1, Ch. 95, L. 1959; amd. Sec. 215, Ch. 147, L. 1963; amd. Sec. 8, Ch. 253, L. 1974; amd. Sec. 1, Ch. 110, L. 1977; amd. Sec. 6, Ch. 397, L. 1977; R.C.M. 1947, 28-111(part); amd. Sec. 2, Ch. 277, L. 1983; amd. Sec. 8, Ch. 700, L. 1989; amd. Sec. 25, Ch. 336, L. 2007.

76-13-210. Payment under protest. An owner who is required to pay to the county treasurer any sum for wildland fire protection as required by part 1 or this part and who contends that the owner is not legally obligated to pay the sum or a part of the sum shall pay it to the county treasurer under written protest, stating the reasons for the protest. The payment under protest and all proceedings subsequent to the payment must conform with the law of this state providing for the payment of taxes under protest and action to recover the payment. In the hearing and determination of any action to recover the payment under protest, all questions of the legality and reasonableness of the proceedings of the department may be reviewed and decided.

History: En. Sec. 12, Ch. 128, L. 1939; amd. Sec. 9, Ch. 253, L. 1974; R.C.M. 1947, 28-112; amd. Sec. 26, Ch. 336, L. 2007.

Cross-References

Protest payments, actions to recover, and alternative remedies, Title 15, ch. 1, part 4.

76-13-211. Amount due for protection treated as lien. (1) Whenever the department provides wildland fire protection for any wildland or timber not protected by the owner of the wildland or timber as required by part 1 or this part, the amount due for the protection is a lien upon the wildland or timber that continues until the amount due is paid.

(2) The lien has the same force, effect, and priority as general tax liens under the laws of the state and is subject and inferior only to tax liens on the wildland or timber. The county attorney of the county in which the wildland or timber is situated shall on request of the department foreclose the lien in the name of the state and in the manner provided by law, or the county attorney upon the request of the department shall institute an action against the landowner in the name of the state in any district or justice court having jurisdiction to recover the debt. The state in the action is not required to pay any fees or costs to the clerk of the court or justice of the peace.

(3) The remedies provided by this section are cumulative and do not affect the other provisions of part 1 or this part for the payment and collection of amounts due to the department.

History: En. Sec. 13, Ch. 128, L. 1939; amd. Sec. 10, Ch. 253, L. 1974; R.C.M. 1947, 28-113; amd. Sec. 52, Ch. 587, L. 1987; amd. Sec. 27, Ch. 336, L. 2007; amd. Sec. 110, Ch. 2, L. 2009.

Cross-References

Liens, Title 71, ch. 3.

76-13-212. Duty of landowner to protect against fire. (1) An owner of land shall protect against the starting or existence of fire and shall suppress the spread of fire on that land. This protection and suppression must be in conformity with reasonable rules and standards for adequate fire protection adopted by the department.

(2) (a) The provisions of 76-13-201 apply to an owner of land that is classified as forest land under 76-13-107 and that is within a wildland fire protection district.

(b) If an owner of land does not provide for protection against the starting or existence of fire and for fire suppression and the land does not meet the criteria in subsection (2)(a), the owner may request that the department provide protection as provided in 76-13-105.

History: En. Sec. 16, Ch. 336, L. 2007.

76-13-213. Formula to set landowner assessments for fire protection. (1) The department shall, pursuant to 76-13-207, set the annual fire assessment fee due from landowners pursuant to Title 76, chapter 13, parts 1 and 2. The total of all statewide landowner assessments may be no greater than one-third of the amount appropriated by the legislature to fund the protection costs.

(2) The individual assessments must be established using the following criteria:

(a) Each person or corporation who is responsible for fire protection pursuant to 76-13-108 and 76-13-201 and for whom the department provides fire protection must be assessed a per capita landowner fee. The total per capita landowner assessments statewide from persons or corporations who own 20 acres or less of land for which the department provides protection must be as close as administratively possible to 60% of the total private landowner assessments.

(b) A person or corporation who owns more than 20 acres of land for which the department provides protection shall, in addition to the fee assessed pursuant to subsection (2)(a), pay a per-acre fee for each whole acre that the person owns in excess of 20 acres. The total of all assessments statewide from persons or corporations that own more than 20 acres must be as close as administratively possible to 40% of the total private landowner assessments.

(c) A person who owns a share of property and has full ownership of a unit on the property must be assessed an amount not less than one-half of the amount established to be assessed for the property under subsection (2)(a).

(3) (a) Except as provided in subsection (3)(b), the per capita and per-acre fees must remain in effect for subsequent years.

(b) The department shall reset the per capita and per-acre fees whenever it is necessary to obtain up to one-third of the amount appropriated by the legislature.

(c) Whenever the department resets the fees pursuant to subsection (3)(b), it shall do so in accordance with 76-13-201(2).

History: En. Sec. 29, Ch. 336, L. 2007; amd. Sec. 1, Ch. 173, L. 2009.

76-13-214. Obstruction of aerial wildfire suppression activities — penalty — exceptions. (1) A person may not obstruct, impede, prevent, or otherwise interfere with lawful aerial wildfire suppression activities by any means, including by the use of an unmanned aerial vehicle system.

(2) A person who violates subsection (1) is guilty of a misdemeanor and shall be punished by a fine of not more than $1,500.

(3) (a) Subsection (1) does not apply to the operation of an unmanned aerial vehicle system conducted by a unit or agency of the United States government or of a state, tribal, or local government, including any individual conducting an operation pursuant to a contract or other agreement entered into with the unit or agency, for the purpose of protecting the public safety and welfare, including firefighting, law enforcement, or emergency response.

(b) Subsection (2) does not limit other remedies available for damages to any person or property or the recovery of wildfire suppression costs caused by a person who violates subsection (1).

History: En. Sec. 1, Ch. 274, L. 2017; amd. Sec. 4, Ch. 662, L. 2023.

Cross-References

Criminal trespass by unmanned aerial vehicle — exceptions, 45-6-210.

Limitations on unmanned aerial vehicles, 46-5-109.

Part 3
Control of Forest Diseases and Insect Pests

76-13-301. Policy. (1) It is the public policy of the state to:

(a) protect and preserve forest resources from destruction by forest insect pests and tree diseases;

(b) protect the forests and watersheds of Montana and restore those watersheds that are most affected by insect pests and tree diseases and are critical to water supplies;

(c) enhance the production of forests;

(d) promote the stability of forest industry; and

(e) protect the recreational values of the forest.

(2) It is further the public policy of the state to independently and through cooperation with the federal government and private forest landowners adopt measures to control, suppress, and eradicate outbreaks of forest insect pests and tree diseases.

History: En. Sec. 1, Ch. 25, L. 1953; Sec. 28-130, R.C.M. 1947; amd. and redes. 28-204 by Sec. 21, Ch. 253, L. 1974; R.C.M. 1947, 28-204; amd. Sec. 1, Ch. 403, L. 2013.

76-13-302. Definitions. In this part, the following definitions apply:

(1) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(2) "Forest land" means any land that has enough forest growth, standing or down, to constitute in the judgment of the department an insect or disease infestation breeding ground of a nature to constitute a menace, injurious and dangerous to the forest resources in the district or zone of infestation.

(3) "Forest landowner" means the person, firm, association, or corporation having the actual, beneficial ownership of forest land or timber, other than an easement, right-of-way, or mineral reservation.

(4) "Salvage" means the timely removal of dead and dying timber or timber that is threatened by insects, disease, fire, or windthrow when the removal of timber will help contain insect or disease outbreaks, aid in the prevention of wildfire, or provide long-range protection for such forest resources as wildlife, water, soils, or air quality.

History: En. Sec. 3, Ch. 25, L. 1953; Sec. 28-131, R.C.M. 1947; amd. and redes. 28-205 by Sec. 22, Ch. 253, L. 1974; R.C.M. 1947, 28-205; amd. Sec. 1, Ch. 529, L. 1981; amd. Sec. 1, Ch. 285, L. 1993; amd. Sec. 264, Ch. 418, L. 1995.

76-13-303. Creation of zone of infestation. (1) The department shall annually produce a list of areas where:

(a) there exists an infestation of forest insect pests or forest tree diseases injurious to the timber or forest growth on forest lands within the state and where the infestation is of such a character as to be a menace to the timber or forest growth of this state; and

(b) an infestation of forest insect pests or forest tree diseases in a watershed makes the watershed at risk for wildfire, places the functionality of the watershed at risk, or creates other conditions that threaten the watershed.

(2) The department shall present the list annually to the board of land commissioners to determine if a zone of infestation exists and, if so, shall fix the boundaries to definitely describe and identify each zone.

History: En. Sec. 5, Ch. 25, L. 1953; Sec. 28-133, R.C.M. 1947; amd. and redes. 28-206 by Sec. 23, Ch. 253, L. 1974; R.C.M. 1947, 28-206(1); amd. Sec. 2, Ch. 529, L. 1981; amd. Sec. 2, Ch. 403, L. 2013.

76-13-304. Suppression and eradication of infestation. (1) The department may enter upon the land within the zone and cause the forest insect pest infestation or forest tree disease to be suppressed, eradicated, and destroyed in the manner approved by it.

(2) In order to accomplish the suppression, eradication, and destruction of the infestation, the department may enter into cooperative agreements with the federal government or other public or private agencies and with forest landowners, using such funds as are made available for those purposes.

(3) The department may consider controlled burning or logging as methods to suppress or eradicate forest insect pest infestation or forest tree disease.

History: En. Sec. 5, Ch. 25, L. 1953; Sec. 28-133, R.C.M. 1947; amd. and redes. 28-206 by Sec. 23, Ch. 253, L. 1974; R.C.M. 1947, 28-206(2); amd. Sec. 1, Ch. 115, L. 2007.

76-13-305. Termination of zone of infestation. When the department determines that forest insect or disease control work within the designated zone of infestation is no longer necessary or feasible, it shall abolish the zone.

History: En. Sec. 6, Ch. 25, L. 1953; Sec. 28-134, R.C.M. 1947; amd. and redes. 28-207 by Sec. 24, Ch. 253, L. 1974; R.C.M. 1947, 28-207.

Part 4
Control of Timber Slash and Debris

Part Cross-References

Brush disposal requirements, 77-5-204.

76-13-401. Definitions. As used in this part, the following definitions apply:

(1) "Certificate of clearance" means a certificate issued by the department acknowledging that the fire hazard has been reduced or managed in accordance with this part and the fire hazard reduction agreement or agreements.

(2) "Contractor" means the person who executes the fire hazard reduction agreement and is responsible to fulfill the obligations established by the agreement.

(3) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(4) "Exemption certificate" means an exemption from the provisions of this part that must be granted by the department for the harvest of merchantable trees within the boundaries of an incorporated city or town.

(5) "Fire hazard" means slash and debris resulting from timber cutting, timber stand improvement, or right-of-way clearing operations that produce a cover of flammable material in which fire could spread through a cutting or adjacent area.

(6) "Fire hazard reduction agreement" means a contract made to ensure compliance with this part and with the rules adopted under 76-13-403 for fire hazard reduction or management on private forest lands.

(7) "Fire hazard reduction or management" means the abatement of a fire hazard on private forest lands by methods that include but are not limited to separation, removal, scattering, lopping, crushing, piling and burning, broadcast burning, burying, or chipping.

(8) "Forest product" means trees or their component parts, including but not limited to logs, poles, branches, or bark.

(9) "Master fire hazard reduction agreement" means a fire hazard reduction agreement between the department and persons engaged in continuing cutting operations of sufficient number and size to warrant covering these operations under a single agreement and a single bond.

(10) "Minimum slash hazard" means an amount of slash and debris generated by noncommercial activities or small-scale activities, which may include but are not limited to harvesting sawlogs or firewood, weeding, pruning, or clearing on private land within the state.

(11) "Person" means an individual, association, partnership, corporation, estate, or any other entity.

(12) "Private forest lands" means all lands of whatever character containing merchantable timber that are not owned by the state, a political subdivision of the state, the United States, any agency of the United States, or an Indian tribe.

(13) "Purchaser" means a person who purchases or contracts to purchase any forest products cut from private forest lands within the state. The term includes persons who purchase products manufactured on the cutting area.

(14) "Small-scale activity" means an activity in which the amount of forest products sold:

(a) does not exceed two log truck loads, each with a maximum of two trailers towed in tandem; or

(b) is less than 10,000 board feet (log scale) or an equivalent measure.

History: En. 28-403.1 by Sec. 1, Ch. 522, L. 1975; R.C.M. 1947, 28-403.1; amd. Secs. 1, 2, Ch. 529, L. 1981; amd. Sec. 1, Ch. 513, L. 1989; amd. Sec. 265, Ch. 418, L. 1995; amd. Sec. 1, Ch. 279, L. 1999; amd. Sec. 1, Ch. 234, L. 2001; amd. Sec. 1, Ch. 31, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 31, L. 2025. Amendment effective October 1, 2025.

76-13-402. Basis for management of fire hazards. The fire hazard reduction or management referred to in this part must be carried on by the department in keeping with modern and progressive forest practices and effective fire protection and may include but is not limited to the taking of protective measures to prevent injury or the destruction of forest resources without actual abatement of the hazard.

History: Ap. p. Sec. 5, Ch. 207, L. 1959; amd. Sec. 1, Ch. 147, L. 1971; amd. Sec. 31, Ch. 253, L. 1974; amd. Sec. 6, Ch. 522, L. 1975; Sec. 28-408, R.C.M. 1947; Ap. p. Sec. 8, Ch. 207, L. 1959; amd. Sec. 33, Ch. 253, L. 1974; Sec. 28-411, R.C.M. 1947; R.C.M. 1947, 28-408(2), 28-411(part); amd. Sec. 2, Ch. 513, L. 1989; amd. Sec. 111, Ch. 2, L. 2009.

76-13-403. Supervision by department. The department shall adopt and enforce rules by October 1, 2000, to supervise and inspect the fire hazard reduction or management of all fire hazards created by forest products harvesting, timber stand improvement, and right-of-way clearing on private forest lands in the state, recognizing the benefits of slash retention.

History: En. Sec. 5, Ch. 207, L. 1959; amd. Sec. 1, Ch. 147, L. 1971; amd. Sec. 31, Ch. 253, L. 1974; amd. Sec. 6, Ch. 522, L. 1975; R.C.M. 1947, 28-408(1); amd. Sec. 3, Ch. 513, L. 1989; amd. Sec. 9, Ch. 27, L. 1997; amd. Sec. 2, Ch. 279, L. 1999.

76-13-404. Repealed. Sec. 13, Ch. 513, L. 1989.

History: En. Sec. 7, Ch. 207, L. 1959; amd. Sec. 2, Ch. 147, L. 1971; amd. Sec. 32, Ch. 253, L. 1974; amd. Sec. 7, Ch. 522, L. 1975; R.C.M. 1947, 28-410; amd. Sec. 1, Ch. 670, L. 1979.

76-13-405. Contracts with fire protection agencies. The department is authorized to enter into contracts with fire protection agencies, including agencies of the United States, for fire hazard reduction or management when in its opinion the work can best be accomplished in that manner.

History: En. Sec. 8, Ch. 207, L. 1959; amd. Sec. 33, Ch. 253, L. 1974; R.C.M. 1947, 28-411(part); amd. Sec. 4, Ch. 513, L. 1989; amd. Sec. 112, Ch. 2, L. 2009.

76-13-406. Limitation on liability. The department and other recognized fire protection agencies, including any agency of the United States, with which the department has entered into an agreement for fire hazard reduction or management as provided in 76-13-405 and any officer, official, or employee of the department or other recognized fire protection agency is not liable for any damage to the land, product, improvement, or other things of value upon the lands on which the fire hazards are being managed or reduced in accordance with provisions of this part, the rules adopted under 76-13-403, and the fire hazard reduction agreement when reasonable care and caution has been used and the work is being or has been performed in compliance with the rules provided in 76-13-403.

History: En. Sec. 8, Ch. 207, L. 1959; amd. Sec. 33, Ch. 253, L. 1974; R.C.M. 1947, 28-411(part); amd. Sec. 5, Ch. 513, L. 1989; amd. Sec. 113, Ch. 2, L. 2009.

Cross-References

Liability exposure, Title 2, ch. 9, part 1.

76-13-407. Reduction of slash and debris along right-of-way. (1) A person clearing right-of-way for any railroad, public highway, public trail, private road, trail, ditch, dike, pipeline or wire lines, or any other transmission or transportation utility right-of-way, except temporary roads located within the boundaries of the cutting area and which are used in the actual logging operations, shall reduce the hazard resulting from the clearing or from the cutting of material for the construction of the public or private utility unless exempted by the department. At least 10 days before commencement of the clearing, the person conducting the clearing shall notify the department of commencement of the clearing in the form and manner the department provides.

(2) Hazard reduction, excluding burning where this method is used, shall be done as rapidly as cutting or clearing progresses.

(3) This section applies to all clearing of rights-of-way across private land and on behalf of the state, county, highway districts, and road districts, whether the work is done by day labor or by contract, and unless unavoidable emergency prevents, provision shall be made by the proper officials conducting, directing, or letting the work for withholding until it is complete a sufficient portion of the payment to assure compliance with this part.

History: En. Sec. 2, Ch. 207, L. 1959; amd. Sec. 28, Ch. 253, L. 1974; amd. Sec. 3, Ch. 522, L. 1975; R.C.M. 1947, 28-405; amd. Sec. 2, Ch. 670, L. 1979; amd. Sec. 6, Ch. 513, L. 1989.

Cross-References

Control of fire hazard along railroad right-of-way, 69-14-721.

76-13-408. Fire hazard reduction agreement and bond — bond release and penalty — exemption. (1) Before cutting any forest product, constructing or reconstructing any road in contemplation of cutting any forest product, or conducting timber stand improvement, such as but not limited to precommercial thinning, weeding, or pruning, upon private forest lands within the state, the person conducting the work must be issued an exemption certificate by the department or shall provide for the reduction or management of the fire hazard to be created, except where a minimum slash hazard would exist, by entering into a fire hazard reduction agreement or a master fire hazard reduction agreement with the department, providing for the full and faithful compliance with all requirements under this part and the faithful reduction or management of the fire hazard in the manner prescribed by law and by rules adopted under this part.

(2) Either the person conducting the work or the purchaser, as provided in 76-13-409(2), shall post a bond to the state in a form and for an amount prescribed by the department, but the amount may not exceed $6 for each 1,000 board feet (log scale) or the equivalent if forest products other than logs are cut. Bond amounts for master fire hazard reduction agreements are calculated to cover the potential cost to the department for fire hazard abatement in case of default and are based on the average annual volume of uncompleted abatement. Master fire hazard reduction agreement bonds are to be administered as nonsite-specific umbrella bonds, for which the entire bond or any portion of the bond may be collected to pay for unabated fire hazards on all sites covered by the bond. The department shall review master fire hazard reduction agreement bond amounts at least annually. The bonds must be adjusted according to the volume of timber harvested and the level of compliance of the bond provider.

(3) The agreement must provide that:

(a) all fire hazard reduction or management work comprising nonburning methods and preparations for burning must be completed within 18 months of commencement of cutting in the area covered by the agreement; and

(b) all burning work must be completed as specified in the agreement and in compliance with rules adopted under this part.

(4) The bond must be released upon the issuance of the certificate of clearance. At the request of the fire hazard reduction agreement holder, cash bonds for fire hazard reduction agreements exceeding 200,000 board feet, or the equivalent, must be partially released upon satisfactory completion of slash piling if the fire hazard reduction agreement holder has a record of compliance with the provisions of 76-13-407 or this section. The department may inspect the sites for which release or partial release is being requested, or it may rely on the submittal of a signed affidavit provided by the person posting the bond. A person that submits a fraudulent affidavit is subject to the penalty provisions of 45-7-202, may have other fire hazard reduction agreements revoked, or may be denied the issuance of fire hazard reduction agreements in the future.

(5) (a) An activity that creates a minimum slash hazard requires a written exemption from the department if forest products are sold. Only one written exemption may be issued for a parcel of land annually. The written exemption under this subsection (5)(a) must be provided to the purchaser at the time of delivery of the forest products being sold.

(b) An activity that creates a minimum slash hazard is exempt from the provisions of this part if no forest products are sold.

History: En. Sec. 1, Ch. 207, L. 1959; amd. Sec. 27, Ch. 253, L. 1974; amd. Sec. 2, Ch. 522, L. 1975; R.C.M. 1947, 28-404; amd. Sec. 5, Ch. 423, L. 1989; amd. Sec. 7, Ch. 513, L. 1989; amd. Sec. 1, Ch. 577, L. 1991; amd. Sec. 10, Ch. 27, L. 1997; amd. Sec. 3, Ch. 279, L. 1999; amd. Sec. 2, Ch. 234, L. 2001; amd. Sec. 1, Ch. 242, L. 2003; amd. Sec. 2, Ch. 31, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 31, L. 2025. Amendment effective October 1, 2025.

76-13-409. Duty of purchaser to ensure compliance — statement — bond. (1) The initial purchaser of forest products that have been cut or are about to be cut from any private forest lands within the state shall, before making the purchase or contract to purchase, determine that the person engaged or about to engage in the cutting of these forest products

has provided for the reduction or management of the fire hazard by entering into a fire hazard reduction agreement or that the person has been issued an exemption certificate as provided in 76-13-408.

(2) The purchaser shall withhold sufficient money to meet the requirements of the bond provided for in 76-13-408 plus the fees for administration, inspection, and enforcement by the department as provided in the fire hazard reduction agreement. The purchaser shall transmit all money and fees that are withheld and a report of volumes of products purchased to the department on or before the 15th day of the following month, clearly identifying by number the fire hazard reduction agreement to which the withheld money, fees, and product volumes pertain. The purchaser shall keep accurate records of the purchase and the amounts withheld, which may be inspected by the department at any reasonable time.

(3) If forest products are not received or purchased in a given month, a report showing a zero balance and stating that products were not purchased must be submitted to the department.

(4) The department may require the purchaser to post a bond to the state in a form and for an amount as may be prescribed by the department to ensure faithful compliance with this part.

History: En. Sec. 3, Ch. 207, L. 1959; amd. Sec. 29, Ch. 253, L. 1974; amd. Sec. 4, Ch. 522, L. 1975; R.C.M. 1947, 28-406; amd. Sec. 3, Ch. 670, L. 1979; amd. Sec. 8, Ch. 513, L. 1989; amd. Sec. 4, Ch. 279, L. 1999.

76-13-410. Failure to comply. (1) If a person fails, refuses, or neglects to properly reduce or manage the fire hazard in accordance with the requirements of 76-13-407 and 76-13-408, the person may be enjoined from further cutting, clearing, and construction operations until the department has found the person to be in compliance with 76-13-407 and 76-13-408. The department may initiate the proceedings and may obtain a temporary restraining order, injunction, or writ of mandate. The proceedings must be conducted in the district court of the county where the land is located.

(2) If a person claims to have a minimum slash hazard but the department's inspection determines otherwise, the hazard reduction requirements of this part apply.

(3) If a person fails to comply with 76-13-407 or 76-13-408 and fails to comply within 30 days after being notified to do so by the department, the department may complete, direct, or authorize the fire hazard reduction or management at the expense of the contractor or of the owner of the timber or other forest products cut or produced from the land upon which the unabated fire hazard remains.

(4) (a) The cost and expense of the fire hazard reduction or management work, plus 20% of the cost and expense of the work as a penalty, constitute a lien upon the forest products cut or produced from the land and upon the real and personal property of the contractor. If payment of the sum demanded is not made to the department within 15 days of its written demand, the performance bond required by 76-13-408 and 76-13-409, upon notice to the contractor, must be automatically forfeited to the extent needed to cover the cost and expenses of reducing or managing the fire hazard, plus a penalty of 20% of the cost and expenses. If the bond is insufficient to cover the cost, expenses, and penalty, the department may bring legal action on behalf of the state to recover the cost, expenses, and penalty.

(b) Revenue from forfeited performance bonds required by 76-13-408 and 76-13-409 must be deposited into the fire hazard reduction fund established in 76-13-417.

(5) In addition to other remedies provided in this part, the department may, after notice, require a person to show cause why the department should not withhold the issuance of any further fire hazard reduction agreement or exemption certificate to a person that:

(a) harvests timber without a valid fire hazard reduction agreement; or

(b) has forfeited the performance bond on a fire hazard reduction agreement within the 2 preceding years and fails, refuses, or neglects to properly reduce or manage the fire hazard in accordance with 76-13-407 or 76-13-408 within 30 days after being notified by the department.

(6) If the person fails to show sufficient cause as required by subsection (5), the department may withhold the issuance of any further fire hazard reduction agreement or exemption certificate for a period not to exceed 3 years.

History: En. Sec. 4, Ch. 207, L. 1959; amd. Sec. 30, Ch. 253, L. 1974; amd. Sec. 5, Ch. 522, L. 1975; R.C.M. 1947, 28-407(1) thru (3); amd. Sec. 4, Ch. 670, L. 1979; amd. Sec. 9, Ch. 513, L. 1989; amd. Sec. 5, Ch. 279, L. 1999; amd. Sec. 3, Ch. 234, L. 2001; amd. Sec. 2, Ch. 61, L. 2011; amd. Sec. 3, Ch. 193, L. 2021.

76-13-411. Certificate of clearance. When the department makes a determination of faithful compliance by the contractor with this part, the rules adopted under 76-13-403, and the fire hazard reduction agreement, the contractor must be issued a certificate of clearance by the department and be relieved of any further liability or responsibility for fire hazard reduction or management under the fire hazard reduction agreement.

History: (1)En. Sec. 9, Ch. 207, L. 1959; amd. Sec. 3, Ch. 147, L. 1971; amd. Sec. 34, Ch. 253, L. 1974; amd. Sec. 8, Ch. 522, L. 1975; Sec. 28-412, R.C.M. 1947; (2)En. Sec. 4, Ch. 207, L. 1959; amd. Sec. 30, Ch. 253, L. 1974; amd. Sec. 5, Ch. 522, L. 1975; Sec. 28-407, R.C.M. 1947; R.C.M. 1947, 28-407(4), 28-412; amd. Sec. 10, Ch. 513, L. 1989; amd. Sec. 6, Ch. 279, L. 1999.

76-13-412. Violations. A person convicted of violating this part, except 76-13-408(4), is guilty of a misdemeanor and shall be fined not less than $100 or more than $1,000.

History: En. 28-413 by Sec. 9, Ch. 522, L. 1975; R.C.M. 1947, 28-413; amd. Sec. 7, Ch. 279, L. 1999.

Cross-References

Definition of misdemeanor, 45-2-101.

76-13-413. Failure to submit withholding — remedy. (1) If a purchaser does not submit withheld money and required reports on or before the 15th day of the following month as provided in 76-13-409, the purchaser must be notified by certified mail that the purchaser is in noncompliance and be given 15 days to submit all money and reports then due. If the purchaser fails to submit all money due within the required time, the department may initiate a lien upon the real property of the purchaser and may initiate proceedings to enjoin further processing of all wood products until all money due is paid in full and all required reports are submitted.

(2) If payment and reports are not received by the department within the 15-day period after notification as provided in subsection (1), a penalty of 5% of the payment amount due must be assessed. The department may abate the penalty if the purchaser establishes that the failure to submit the amount due or the reports as required was due to reasonable cause and was not due to neglect on the purchaser's part. The department, in addition to the penalty, may impose interest at the rate of 10% a year on any balance remaining unpaid.

(3) All money withheld by a purchaser for the contractor's bond and for department fees is considered to be excise taxes withheld for the benefit of the state within the meaning of 11 U.S.C. 507.

History: En. Sec. 5, Ch. 670, L. 1979; amd. Sec. 1, Ch. 115, L. 1981; amd. Sec. 11, Ch. 513, L. 1989; amd. Sec. 2522, Ch. 56, L. 2009.

76-13-414. Fees. (1) In addition to any bond, the department shall charge the contractor fees for administration, inspections, and enforcement work conducted in the exercise of its duties under this part. The fees must be deposited in the state special revenue fund to the credit of the department.

(2) (a) The fee for a fire hazard reduction agreement is $25 and must be collected by the department upon issuance of the agreement.

(b) In addition, a fee of 85 cents for each 1,000 board feet (log scale) must be charged or an equivalent fee must be charged if products other than logs are cut. This fee must be withheld by the purchaser as provided in 76-13-409(2), except that any fee money withheld for product volumes exceeding 500,000 board feet for each agreement in a calendar year must be returned to the contractor by the department.

(c) Either the person conducting the work or the purchaser, as described in 76-13-409, shall pay 30 cents for each 1,000 board feet (log scale) or the equivalent measure if forest products other than logs are cut. The assessment may not exceed $20,000 a year. The full amount of this money must be deposited in the forestry extension service account provided for in 76-13-415.

(3) (a) The fee for master fire hazard reduction agreements must be equal to 100% of the department's actual costs incurred in the direct administration, inspection, and enforcement of each agreement, and the department shall submit a detailed bill to the contractor annually to collect the fees.

(b) In addition, each contractor with a master fire hazard reduction agreement shall pay to the department 15 cents for each 1,000 board feet (log scale) or equivalent measure if forest products other than logs are cut. The assessment may not exceed $20,000 a year for each master fire hazard agreement. The full amount of this money must be deposited in the forestry extension service account provided for in 76-13-415.

(c) The fee required under subsection (3)(b) must be paid annually in conjunction with the fee paid under subsection (3)(a). The department may, in its discretion, conduct an audit to determine the volume of forest products harvested by a contractor. If the department conducts an audit, the contractor shall cooperate and make available to the department all requested records, inventories, and other information relevant to the audit.

History: En. Sec. 12, Ch. 513, L. 1989; amd. Sec. 2, Ch. 577, L. 1991; amd. Sec. 11, Ch. 27, L. 1997; amd. Sec. 8, Ch. 279, L. 1999; amd. Sec. 1, Ch. 18, L. 2019.

76-13-415. Forestry extension service account — purpose — appropriation. (1) There is a forestry extension service account in the current restricted fund provided for in 17-2-102.

(2) There must be deposited in the account:

(a) all revenue from the fire hazard reduction agreement provided for in 76-13-414(2)(c);

(b) all revenue from the master fire hazard reduction agreement provided for in 76-13-414(3)(b); and

(c) money received by the department in the form of legislative appropriations, reimbursements, gifts, federal funds, or appropriations from any source intended to be used for the purposes of this account.

(3) Money in the account is available to the Montana university system by appropriation for the uses set forth in subsection (4). Any unencumbered and unexpended balance remaining in this account at the end of a fiscal year does not lapse but must be carried forward for the purposes of this section until expended or appropriated.

(4) Except as provided in subsection (5), money in the account may be used by the university system only to fund forestry services through the Montana cooperative extension service of Montana state university-Bozeman. The forestry services must be conducted at Montana state university-Bozeman, the university of Montana-Missoula, and Flathead Valley community college.

(5) The use of money in this account by the Montana university system is contingent upon the university system funding the extension service's forestry and natural resources program at a biennial level of at least $108,000 from sources other than the account.

History: En. Sec. 3, Ch. 577, L. 1991; amd. Sec. 266, Ch. 418, L. 1995; amd. sec. 36, Ch. 308, L. 1995; amd. Sec. 9, Ch. 279, L. 1999.

76-13-416. Terminated. Sec. 6, Ch. 61, L. 2011.

History: En. Sec. 3, Ch. 61, L. 2011.

76-13-417. Fire hazard reduction fund. (1) There is a fire hazard reduction fund in the state special revenue fund established in 17-2-102.

(2) There is deposited in the fund all revenue from forfeited performance bonds provided for in 76-13-410.

(3) The fund is statutorily appropriated, as provided in 17-7-502, to the department of natural resources and conservation for the purposes of authorizing, managing, and completing fire hazard reduction activities pursuant to this part.

History: En. Sec. 1, Ch. 193, L. 2021.

76-13-418. Fire hazard reduction agreement — slash burning. (1) Slash burning as part of fire hazard reduction agreements must be conducted under rules adopted pursuant to this part and burning notification requirements adopted pursuant to 7-33-2205.

(2) Immediate or continuous presence is not required for slash burning conducted under this section provided that:

(a) significant precipitation, the presence of persistent snow cover, fuel moisture conditions, or a combination of those factors sufficiently inhibits the chance of fire spreading under current and foreseeable weather conditions;

(b) there is an absence of high wind events or warnings for the slash burning period that would cause the fire or embers to spread beyond the intended location; and

(c) the slash burn location is sufficiently monitored, patrolled, or both until the risk of fire spread subsides. This includes at least one site visit to ensure containment.

(3) Nothing in this section absolves the holder of a fire hazard reduction agreement from operating with reasonable care and caution or the provisions of 50-63-102 and 50-63-103.

History: En. Sec. 1, Ch. 478, L. 2023; amd. Sec. 24, Ch. 53, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 24, Ch. 53, L. 2025. Amendment effective October 1, 2025.

76-13-419 reserved.

76-13-420. Notification prior to forest practices — department response. (1) An operator or, pursuant to subsection (3), an owner shall notify the department prior to conducting forest practices. The notification may be provided as part of the notification made with respect to an agreement under 76-13-408.

(2) (a) Except as provided in subsection (3), within 5 working days, but not exceeding 7 calendar days, of receiving notification of forest practices, the department shall mail to the operator and, if an address has been provided, to the owner:

(i) a receipt of notification;

(ii) information on best management practices for forestry;

(iii) information on conservation district permit requirements related to stream crossings; and

(iv) any other information the department believes would assist the operator or the owner with conducting forest practices.

(b) The receipt of notification must include a statement that:

(i) forest practices may proceed; or

(ii) an onsite consultation is required prior to conducting forest practices.

(3) (a) An owner may submit to the department a notice providing an annual, semiannual, or quarterly operating plan that indicates the estimated starting date of forest practices for each timber sale planned by the owner during the operating period. The plan must be submitted no less than 15 days before the beginning of the operating period covered.

(b) Upon receipt of an operating plan, the department may:

(i) meet with the owner to review the proposed timber sales, discuss watershed concerns, and schedule onsite consultations at appropriate sites; or

(ii) provide a receipt of notification, as described in subsection (2)(b), for individual timber sales.

(c) If the department requires an onsite consultation for any of the timber sales, it shall notify the owner of this requirement as soon as possible but no less than 10 calendar days prior to the estimated starting date of forest practices associated with the timber sale. The onsite consultation must then be scheduled according to the provisions of 76-13-421(2) through (4).

History: En. Sec. 4(1) thru (3), Ch. 423, L. 1989; Sec. 76-13-131, MCA 2005; redes. 76-13-420 by Sec. 32(3), Ch. 336, L. 2007.

Cross-References

Fire hazard reduction agreement and bond, 76-13-408.

76-13-421. Onsite consultation. (1) The department shall make its decision on whether or not to require an onsite consultation based on whether:

(a) the proposed timber sale is in a high-priority location for watershed resources;

(b) a consultation could contribute to improved watershed management; and

(c) the department has sufficient resources to conduct the consultation.

(2) The department shall schedule an onsite consultation at a time mutually agreeable to the operator, the owner (if the owner can be contacted and wishes to participate), and the department. Unless otherwise agreeable to the operator and a participating owner, a consultation must be held no later than:

(a) 10 calendar days after the mailing of the notice by the department, if the site is accessible; or

(b) if the site is temporarily inaccessible due to road conditions, weather conditions, or other factors, 10 calendar days after the operator indicates that the site is accessible.

(3) The onsite consultation must include representatives of the department, the operator, and, if the owner desires representation, the owner. Representatives of the department of environmental quality, the department of fish, wildlife, and parks, and the local conservation district may also participate but shall meet the consultation schedule established under 76-13-420(3)(c) or subsection (2) of this section.

(4) If the department and the operator are not able to schedule an onsite consultation within the time limits provided in subsection (2)(a) or (2)(b) or at another mutually agreeable time, the requirement for a consultation is terminated. The operator may then proceed with forest practices immediately upon the expiration of the time limits provided in subsection (2)(a) or (2)(b).

History: En. Sec. 4(4) thru (7), Ch. 423, L. 1989; amd. Sec. 263, Ch. 418, L. 1995; Sec. 76-13-132, MCA 2005; redes. 76-13-421 by Sec. 32(3), Ch. 336, L. 2007.

76-13-422. Purpose of onsite consultation — department responsibility. (1) The onsite consultation provided for in 76-13-421 is intended only for the purpose of providing information to owners and operators and does not confer upon the department or any other agency of state or local government authority to compel an owner or operator to undertake or refrain from undertaking specific management practices that are not otherwise regulated by law or rule.

(2) The department does not incur any obligation or liability by virtue of a decision to conduct or not conduct an onsite consultation.

(3) To the extent practicable, the department shall evaluate the application of forest practices as part of an onsite inspection, relating to the control of timber slash and debris, conducted under the provisions of Title 76, chapter 13, part 4.

History: En. Sec. 4(8), (9), (12), Ch. 423, L. 1989; Sec. 76-13-133, MCA 2005; redes. 76-13-422 by Sec. 32(3), Ch. 336, L. 2007.

76-13-423. When additional notification required. (1) Except as provided in subsection (2), the department may require only one notification for each timber sale, even though multiple forest practices may be conducted.

(2) If an operator modifies the operator's proposed forest practices in a manner that substantially alters the potential watershed disturbance, the operator shall submit a revised notification to the department.

History: En. Sec. 4(10), Ch. 423, L. 1989; Sec. 76-13-134, MCA 2005; redes. 76-13-423 by Sec. 32(3), Ch. 336, L. 2007; amd. Sec. 2523, Ch. 56, L. 2009.

76-13-424. Emergency forest practices. Nothing in 76-13-420 through 76-13-424 precludes an operator from undertaking any forest practice in an emergency to prevent watershed damage or the loss of timber resources.

History: En. Sec. 4(11), Ch. 423, L. 1989; Sec. 76-13-135, MCA 2005; redes. 76-13-424 by Sec. 32(3), Ch. 336, L. 2007.

Part 5
Portable Sawmills on Forest Lands
(Repealed)

76-13-501. Repealed. Sec. 1, Ch. 94, L. 2001.

History: En. 28-801 by Sec. 106, Ch. 253, L. 1974; R.C.M. 1947, 28-801; amd. Sec. 1, Ch. 529, L. 1981; amd. Sec. 267, Ch. 418, L. 1995.

76-13-502. Repealed. Sec. 1, Ch. 94, L. 2001.

History: En. Sec. 1, Ch. 124, L. 1931; re-en. Sec. 1839.1, R.C.M. 1935; Sec. 81-1501, R.C.M. 1947; amd. and redes. 28-802 by Sec. 107, Ch. 253, L. 1974; R.C.M. 1947, 28-802.

76-13-503. Repealed. Sec. 1, Ch. 94, L. 2001.

History: En. Sec. 2, Ch. 124, L. 1931; re-en. Sec. 1839.2, R.C.M. 1935; amd. Sec. 2, Ch. 248, L. 1965; Sec. 81-1502, R.C.M. 1947; amd. and redes. 28-803 by Sec. 108, Ch. 253, L. 1974; R.C.M. 1947, 28-803; amd. Sec. 35, Ch. 281, L. 1983.

76-13-504. Repealed. Sec. 1, Ch. 94, L. 2001.

History: En. Sec. 3, Ch. 124, L. 1931; re-en. Sec. 1839.3, R.C.M. 1935; Sec. 81-1503, R.C.M. 1947; amd. and redes. 28-804 by Sec. 109, Ch. 253, L. 1974; R.C.M. 1947, 28-804.

76-13-505. Repealed. Sec. 1, Ch. 94, L. 2001.

History: En. Sec. 4, Ch. 124, L. 1931; re-en. Sec. 1839.4, R.C.M. 1935; Sec. 81-1504, R.C.M. 1947; amd. and redes. 28-805 by Sec. 110, Ch. 253, L. 1974; R.C.M. 1947, 28-805.

76-13-506. Repealed. Sec. 1, Ch. 94, L. 2001.

History: En. Sec. 6, Ch. 124, L. 1931; re-en. Sec. 1839.6, R.C.M. 1935; Sec. 81-1506, R.C.M. 1947; amd. and redes. 28-806 by Sec. 111, Ch. 253, L. 1974; R.C.M. 1947, 28-806(part).

76-13-507. Repealed. Sec. 1, Ch. 94, L. 2001.

History: En. Sec. 6, Ch. 124, L. 1931; re-en. Sec. 1839.6, R.C.M. 1935; Sec. 81-1506, R.C.M. 1947; amd. and redes. 28-806 by Sec. 111, Ch. 253, L. 1974; R.C.M. 1947, 28-806(part).

Part 6
Transportation of Coniferous Trees

76-13-601. Unlawful transportation of trees and boughs. (1) A person may not transport on the ways of this state more than five coniferous trees without having possession of a bill of sale showing ownership of the trees. The bill of sale shall specify:

(a) the date of its execution;

(b) the name and address of the vendor or donor of the trees;

(c) the name and address of the vendee or donee of the trees;

(d) the number of trees, by species, sold or transferred by the bill of sale; and

(e) the shipping yards or the property from which the trees were taken.

(2) Subsection (1) does not apply to:

(a) the transportation of trees with their roots intact;

(b) the transportation of logs, poles, pilings, or other forest products from which substantially all the limbs and branches have been removed;

(c) the transportation of coniferous trees by the owner of the land from which they were taken or the owner's agent, provided that agent has possession of a tax receipt or other evidence indicating the section, township, and range from which the trees were harvested; or

(d) the transportation of coniferous trees by a common carrier.

(3) A person may not transport on the ways of this state more than 200 pounds of boughs from coniferous trees without written authorization of the owner of the boughs.

(4) The bill of sale required in subsection (1) or the written authorization required in subsection (3) must be exhibited on request of a law enforcement officer, highway patrol officer, state fish and game warden, an employee of the department of transportation designated or appointed as a peace officer under 61-10-154 or 61-12-201, or an agent of the department of natural resources and conservation.

(5) A person who violates this section shall be punished by a fine not to exceed $500, imprisonment not to exceed 6 months, or both.

(6) For the purposes of this section, "ways of this state" means any highway, road, alley, lane, parking area, or other public or private place adapted and fitted for public vehicle travel that is commonly used by the public with the express or implied consent of the owner.

History: En. Sec. 1, Ch. 133, L. 1981; amd. Sec. 1, Ch. 621, L. 1983; (5)En. Sec. 2, Ch. 621, L. 1983; amd. Sec. 1, Ch. 35, L. 1987; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 268, Ch. 418, L. 1995; amd. Sec. 13, Ch. 366, L. 2005.

Cross-References

Place of imprisonment when not specified by law, 46-18-211.

Part 7
Sustainable Management of Public Forests

76-13-701. Findings and policy. (1) The legislature finds that the sustainable management of public forests in Montana is vital to conserving the state's natural resources and their economic and ecological potential for the benefit of all Montanans.

(2) The legislature finds that public forests in Montana should be sustainably managed to maintain biodiversity, productivity, regeneration capacity, vitality, and potential to fulfill relevant ecological, economic, and social functions.

(3) The legislature finds that sustainable forest stewardship and management of Montana's public forests requires a balanced approach that ensures a stable timber supply, active restoration, healthy watersheds and fish and wildlife habitat, areas for natural processes, and allowances for multiple uses.

(4) The legislature finds that:

(a) there is overwhelming evidence that the management, protection, and conservation of watersheds in Montana is critical to the well-being of the state;

(b) the water supplies of some of the state's most populous cities and surrounding areas originate in federally managed watersheds that are at risk for catastrophic wildfire, the severity of which could be reduced by proper management;

(c) a catastrophic wildfire in any one of those municipal watersheds would result in ash and sediment inundating and degrading the water supply, leaving tens of thousands of residents without drinking water, creating a severe public safety situation, and decimating millions of dollars worth of water infrastructure;

(d) a burned-out watershed also affects the timing of snow melt and stream flow, which detrimentally affects irrigation and fisheries; and

(e) federal land managers are not giving due consideration to the constitutionally protected water rights of the state and its citizens, the exercise of which would be impaired by a catastrophic wildfire.

(5) The legislature declares that it is the policy of this state to promote the sustainable use of all public forests within the state through sound management and collaboration with local, state, and federal entities.

History: En. Sec. 1, Ch. 409, L. 2007; amd. Sec. 3, Ch. 403, L. 2013.

76-13-702. Duties — authority. To implement the policy of 76-13-701, the department of natural resources and conservation:

(1) shall support sustainable forest management practices, including forest restoration, on public forests in Montana consistent with all applicable laws and administrative requirements;

(2) shall provide technical information and educational assistance to nonindustrial, private forest landowners;

(3) shall promote forest management activities within and adjacent to the wildland-urban interface and promote the implementation of community wildfire protection plans;

(4) shall promote a viable forest and wood products industry and other businesses and individual activities that rely on public forest lands;

(5) shall represent the state's interest in the federal forest management planning and policy process, including establishing cooperative agency status and coordination with federal agencies;

(6) shall advocate that Montana be included in federal legislation to establish a good neighbor policy that would allow the secretary of the interior or the secretary of agriculture to enter into a cooperative agreement or contract that would authorize the state forester to provide watershed restoration and protection services on federal land. Watershed restoration and protection services included in the good neighbor policy must include the authority to:

(a) treat insect-infested trees;

(b) reduce hazardous fuels; and

(c) conduct any other activities to restore or improve forest, rangeland, and watershed health, including fish and wildlife habitat.

(7) may assist local government entities in establishing cooperative agency status and coordination with federal agencies;

(8) shall promote the development of an independent, long-term sustained yield calculation on Montana's federal forests;

(9) has the authority to intervene in litigation or appeals on federal forest management projects that:

(a) comply with the policy in 76-13-701 and in which local and state interests are clearly involved; or

(b) involve fuel-loading conditions that the department considers to be a significant threat to public health and safety or to hamper watershed restoration and protection;

(10) has the authority to enter into agreements with federal agencies to participate in forest management activities on federal lands; and

(11) shall participate in and facilitate collaboration between traditional forest interests in reaching consensus-based solutions on federal land management issues.

History: En. Sec. 2, Ch. 409, L. 2007; amd. Sec. 1, Ch. 58, L. 2009; amd. Sec. 1, Ch. 115, L. 2009; amd. Sec. 4, Ch. 403, L. 2013.

Part 8
Mechanized Fuels Reduction and Fire Suppression (Terminated)

76-13-801. Terminated. Sec. 7, Ch. 289, L. 2009.
History: En. Sec. 1, Ch. 289, L. 2009.

76-13-802. Terminated. Sec. 7, Ch. 289, L. 2009.
History: En. Sec. 4, Ch. 289, L. 2009.

Part 9
Prescribed Fire Manager Certification and Liability

76-13-901. Short title. This part may be cited as the "Prescribed Fire Manager Certification and Liability Act".
History: En. Sec. 1, Ch. 635, L. 2025.
Compiler's Comments
Effective Date: Section 14, Ch. 635, L. 2025, provided that this section is effective on passage and approval. Approved May 12, 2025.

76-13-902. Purpose. The purposes of this part are to establish a prescribed fire manager certification program and to establish a contingent liability standard.
History: En. Sec. 2, Ch. 635, L. 2025.
Compiler's Comments
Effective Date: Section 14, Ch. 635, L. 2025, provided that this section is effective on passage and approval. Approved May 12, 2025.

76-13-903. Definitions. For the purposes of this part, the following definitions apply:
(1) "Certified prescribed fire manager" means a person who has successfully completed a prescribed fire manager certification program approved by the department and who is in good standing with the department.
(2) "Department" means the department of natural resources and conservation provided for in 2-15-3301.
(3) "Prescribed fire" means an intentionally set fire that meets specific predefined land management objectives and that is done under specific weather conditions, in accordance with applicable laws, rules, and policies.
History: En. Sec. 3, Ch. 635, L. 2025.
Compiler's Comments
Effective Date: Section 14, Ch. 635, L. 2025, provided that this section is effective on passage and approval. Approved May 12, 2025.

76-13-904. Prescribed fire manager certification program — rulemaking. (1) The department may create a prescribed fire manager certification program. The program must include training on all relevant aspects of prescribed fire in the state, including but not limited to the following:
(a) applicable laws and rules;
(b) safety planning and management;
(c) weather;
(d) prescribed fire behavior, complexity analysis, and techniques;
(e) smoke management;
(f) prescribed fire burn plan requirements and standards;
(g) public relations;
(h) prescribed fire burn permitting; and
(i) contingencies.
(2) The department may adopt rules to implement the prescribed fire manager certification program, including:
(a) training requirements;
(b) certification standards;
(c) reciprocity requirements for prescribed fire certifications from other states and organizations;

(d) administration of the prescribed fire manager certification claims account; and

(e) fees.

History: En. Sec. 4, Ch. 635, L. 2025.

Compiler's Comments

Effective Date: Section 14, Ch. 635, L. 2025, provided that this section is effective on passage and approval. Approved May 12, 2025.

76-13-905. *(Effective on occurrence of contingency)* **Liability.** A certified prescribed fire manager or a landowner or landowner's agent using a certified prescribed fire manager who conducts a prescribed fire in compliance with this part and the rules adopted by the department is not liable for injury to or destruction of property arising from a wildfire, except to the extent evidence demonstrates that:

(1) an action or omission of the certified prescribed fire manager, landowner, or landowner's agent constituted negligence or a higher degree of fault; and

(2) the action or omission caused or contributed to the cause of the wildfire or caused or contributed to the wildfire spreading.

History: En. Sec. 5, Ch. 635, L. 2025.

Compiler's Comments

Contingent Effective Date: Section 14, Ch. 635, L. 2025, provided in subsection (2) that this section is effective after legislative appropriation of funds to the prescribed fire manager certification claims special revenue account in 76-13-907 and that the department of natural resources and conservation shall submit certification of the appropriation to the Code Commissioner within 15 days of the occurrence of the contingency.

76-13-906. Applicability — enforcement. (1) This part may not be construed as requiring certification as a prescribed fire manager to conduct burning operations on one's own property or on the property of another person with the person's permission if the person complies with applicable laws and rules related to prescribed fire and burning.

(2) The department may revoke a person's prescribed fire manager certification if the person violates the standards established in this part or rules adopted by the department.

History: En. Sec. 6, Ch. 635, L. 2025.

Compiler's Comments

Effective Date: Section 14, Ch. 635, L. 2025, provided that this section is effective on passage and approval. Approved May 12, 2025.

76-13-907. Prescribed fire manager certification claims special revenue account. (1) There is a prescribed fire manager certification claims special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be deposited in the account money received by the department in the form of grants, gifts, transfers, bequests, donations, and appropriations from any source intended to be used for the purposes of this part.

(3) Money deposited in the account may not be used for any purposes other than for the development and administration of the prescribed fire manager certification program or the payment of claims of injury or destruction of property from an escaped prescribed fire or burn conducted by a certified prescribed fire manager.

History: En. Sec. 7, Ch. 635, L. 2025.

Compiler's Comments

Effective Date: Section 14, Ch. 635, L. 2025, provided that this section is effective on passage and approval. Approved May 12, 2025.

76-13-908. Department study of prescribed fire liability. (1) The department shall conduct a study for the development of a prescribed fire claims fund.

(2) The study must examine:

(a) the use of the fund to support coverage for property damage from an escaped prescribed fire conducted by a certified prescribed fire manager; and

(b) economic damage from an escaped prescribed fire conducted by a certified prescribed fire manager, including loss of time, resources, crops, fencing, and agricultural improvements.

History: En. Sec. 8, Ch. 635, L. 2025.

Compiler's Comments

Effective Date: Section 14, Ch. 635, L. 2025, provided that this section is effective on passage and approval. Approved May 12, 2025.

CHAPTER 14
RANGELAND RESOURCES

Part 1 — Rangeland Management

76-14-101. Short title.
76-14-102. Purpose.
76-14-103. Definitions.
76-14-104. Types of land included as rangeland.
76-14-105. Role of state coordinator.
76-14-106. Duties of rangeland resources committee.
76-14-107 through 76-14-110 reserved.
76-14-111. Rangeland improvement loan program.
76-14-112. Rangeland improvement loan special revenue account.
76-14-113. Eligibility for loans.
76-14-114. Criteria for evaluation of loan applications.
76-14-115. Selection of loan recipients.
76-14-116. Rules.

Part 1
Rangeland Management

76-14-101. Short title. This part shall be known as the "Montana Rangeland Resources Act".

History: En. 76-301 by Sec. 1, Ch. 408, L. 1977; R.C.M. 1947, 76-301.

76-14-102. Purpose. The purpose of this part is to establish a program of rangeland management whereby:

(1) the importance of Montana's rangeland with respect to livestock, forage, wildlife habitat, high-quality water production, pollution control, erosion control, recreation, and the natural beauty of the state is recognized;

(2) cooperation and coordination of range management activities between persons and organizations charged with or having the management of rangeland, whether private or public, can be promoted and developed; and

(3) those who are doing exceptional work in range management can receive appropriate recognition.

History: En. 76-302 by Sec. 2, Ch. 408, L. 1977; R.C.M. 1947, 76-302.

76-14-103. Definitions. As used in this part, the following definitions apply:

(1) "Committee" means the Montana rangeland resources committee selected as provided in 2-15-3305(2).

(2) "Department" means the department of natural resources and conservation.

(3) "Montana rangeland resource program" means the rangeland resource program administered by the conservation districts division of the department of natural resources and conservation in concert with the Montana conservation districts law and the Grass Conservation Act to maintain and enhance the rangeland resources of the state.

(4) "Person" means any individual or association, partnership, corporation, or other business entity.

(5) "Range condition" means the current condition of the vegetation on a range site in relation to the natural potential plant community for that site.

(6) "Range management" means a distinct discipline founded on ecological principles and dealing with the husbandry of rangelands and range resources.

(7) "Rangeland" means land on which the native vegetation (climax or natural potential) is predominantly grasses, grasslike plants, forbs, or shrubs suitable for grazing or browsing use.

(8) "State coordinator" means the state coordinator for the Montana Rangeland Resources Act provided for in 2-15-3304.

(9) "Tame pastureland" means land that has been modified by mechanical cultivation and that has current vegetation consisting of native or introduced species, or both.

(10) "Users of rangeland" means all persons, including but not limited to ranchers, farmers, hunters, anglers, recreationists, and others appreciative of the functional, productive, aesthetic, and recreational uses of rangelands.

History: (1) thru (6), (8)En. 76-303 by Sec. 3, Ch. 408, L. 1977; Sec. 76-303, R.C.M. 1947; (7)En. by Code Commissioner, 1979; R.C.M. 1947, 76-303(part); amd. Sec. 1, Ch. 171, L. 1983; amd. Sec. 66, Ch. 44, L. 2007.

76-14-104. Types of land included as rangeland. The term "rangeland" includes lands revegetated naturally or artificially to provide a forage cover that is managed like native vegetation. Rangelands include natural grasslands, savannahs, shrublands, most deserts, tundra, alpine communities, coastal marshes, and wet meadows.

History: En. 76-303 by Sec. 3, Ch. 408, L. 1977; R.C.M. 1947, 76-303(part).

76-14-105. Role of state coordinator. The state coordinator shall:

(1) serve as an advisor, counselor, and coordinator for and between persons and agencies involved in range management;

(2) strive to create understanding and compatibility between the many users of rangeland, including hunters, anglers, recreationists, ranchers, and others;

(3) promote and coordinate the adoption and implementation of sound range management plans to minimize conflicts between governmental agencies and private landowners;

(4) participate in zoning and planning studies to ensure that native ranges are adequately represented at sessions for development of zoning and planning regulations;

(5) coordinate range management research to help prevent duplication and overlap of effort in this area.

History: En. 76-304 by Sec. 4, Ch. 408, L. 1977; R.C.M. 1947, 76-304(2); amd. Sec. 2524, Ch. 56, L. 2009.

76-14-106. Duties of rangeland resources committee. (1) The committee shall:

(a) review and recommend annual and long-range work programs;

(b) suggest priorities of work;

(c) provide advice and counsel to the coordinator for carrying out the rangeland resource program.

(2) The committee may consult with state and federal agencies and units of the university system as it considers appropriate in performing its duties.

History: En. 76-307 by Sec. 7, Ch. 408, L. 1977; R.C.M. 1947, 76-307; amd. Sec. 2, Ch. 44, L. 1985.

76-14-107 through 76-14-110 reserved.

76-14-111. Rangeland improvement loan program. The department may make rangeland improvement loans for rangeland development and improvement, including but not limited to stock water development, cross fencing, establishment of grazing systems, reseeding, mechanical renovation, sagebrush management, and weed control.

History: En. Sec. 2, Ch. 171, L. 1983.

76-14-112. Rangeland improvement loan special revenue account. (1) There is created a rangeland improvement loan special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be allocated to the rangeland improvement loan earmarked account any principal and accrued interest received in repayment of a loan made under the rangeland improvement loan program and any fees or charges collected by the department pursuant to 76-14-116 for the servicing of loans, including arrangements for obtaining security interests.

(3) Deposits to the rangeland improvement loan special revenue account must be placed in short-term investments, and the earnings must be deposited in the rangeland improvement loan special revenue account.

History: En. Sec. 3, Ch. 171, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 14, Ch. 418, L. 1987; amd. Sec. 55, Ch. 16, L. 1991; amd. Sec. 1, Ch. 437, L. 2023.

76-14-113. Eligibility for loans. (1) Any person may apply for a loan to finance rangeland improvements to be constructed, developed, and operated in Montana who:

(a) is a resident of Montana;

(b) is engaged in farming or ranching; and

(c) possesses the necessary expertise to make a rangeland loan practical.

(2) All loans must be for rangeland improvement or development exclusively.

(3) An application for a loan must be in the form prescribed by the department and accompanied by a resource conservation plan, which may be prepared in consultation with the United States natural resources conservation service.

History: En. Sec. 4, Ch. 171, L. 1983; amd. Sec. 280, Ch. 42, L. 1997.

76-14-114. Criteria for evaluation of loan applications. The following criteria must be considered in selecting loan recipients:

(1) Loan applications must be ranked according to the following priorities:

(a) Range improvement or development projects undertaken on native rangeland, resulting in the improvement of native range condition and of benefit to more than a single operator, have first priority.

(b) Range improvement or development projects undertaken on native rangeland, resulting in the improvement of native range condition but of benefit to only a single operator, have second priority.

(c) Range improvement or development projects undertaken on either native rangeland or tame pastureland used in conjunction with native rangeland, or both, resulting in the improvement of native range condition and the condition of the tame pastureland used in conjunction with native rangeland, have third priority.

(d) Range improvement or development projects undertaken on tame pastureland, resulting in the improvement of the tame pastureland exclusively, have fourth priority.

(e) Range improvement or development projects undertaken to return to rangeland status land that was once native rangeland and that has since been cultivated have fifth priority.

(2) Consideration must be given to the number of related resources that will benefit, including but not limited to water quality, wildlife habitat, and soil conservation.

(3) Consideration must be given to the amount of funding from other sources.

(4) Consideration must be given to the feasibility and practicality of the project.

History: En. Sec. 5, Ch. 171, L. 1983.

76-14-115. Selection of loan recipients. (1) Conservation district supervisors shall initially review loan applications for feasibility and prioritize applications for referral to the department.

(2) The department shall organize and review applications for clarity and completeness prior to committee review.

(3) The committee shall consider applications and make recommendations to the department.

(4) The department shall finally approve or disapprove applications recommended by the committee and shall select loan recipients.

History: En. Sec. 6, Ch. 171, L. 1983.

76-14-116. Rules. The department shall adopt rules:

(1) prescribing the form and content of applications for loans and the required conservation plan;

(2) governing the application of the criteria for awarding loans and the procedure for the review of applications by conservation district supervisors, the committee, and the department;

(3) providing for the servicing of loans, including arrangements for obtaining security interests and the establishment of reasonable fees or charges;

(4) providing for the confidentiality of financial statements submitted; and

(5) prescribing the conditions for making loans.

History: En. Sec. 7, Ch. 171, L. 1983.

Cross-References

Adoption and publication of rules under Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

CHAPTER 15
CONSERVATION DISTRICTS

Part 1 — General Provisions

76-15-101. Legislative determinations.
76-15-102. Declaration of policy.
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76-15-404. Acquisition and management of property.
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Chapter Cross-References
Montana Environmental Policy Act, Title 75, ch. 1.
Conservation easements, Title 76, ch. 6, part 2.

Part 1
General Provisions

76-15-101. Legislative determinations. It is declared, as a matter of legislative determination:

(1) that the farm and grazing lands of the state of Montana are among the basic assets of the state and that the preservation of these lands is necessary to protect and promote the health, safety, and general welfare of its people; that improper land use practices have caused and have contributed to and are now causing and contributing to a progressively more serious erosion of the farm and grazing lands of this state by wind and water; that the breaking of natural grass, plant, and forest cover has interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus and developing a soil condition that favors erosion; that the topsoil is being blown and washed out of fields and pastures; that there has been an accelerated washing of sloping fields; that these processes of erosion by wind and water speed up with removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erosive subsoil; that failure by any land occupier to conserve the soil and control erosion upon the occupier's lands causes a washing and blowing of soil and water from the occupier's lands onto other lands and makes the conservation of soil and control of erosion on other lands difficult or impossible;

(2) that the consequences of soil erosion in the form of soil blowing and soil washing are the silting and sedimentation of stream channels, reservoirs, dams, and ditches, the loss of fertile soil material in dust storms, the piling up of soil on lower slopes and its deposit over alluvial plains, the reduction in productivity or outright ruin of rich bottom lands by overwash of poor subsoil material, sand, and gravel swept out of the hills, the deterioration of soil and its fertility, the deterioration of crops and range cover grown on the land, declining acre yields despite development of scientific processes for increasing yields, the loss of soil and water that

causes destruction of food and cover for wildlife, a blowing and washing of soil into streams that silts over spawning beds and destroys water plants, diminishing the food supply of fish, a diminishing of the underground water reserve, which causes water shortages, intensifies periods of drought, and causes crop and range vegetation cover failures, an increase in the speed and volume of rainfall runoff, causing severe and increasing floods that bring suffering, disease, and death, the impoverishment of families attempting to operate eroding and eroded lands, damage to roads, highways, railways, farm buildings, and other property from floods and from dust storms, and losses in municipal water supply, irrigation developments, farming, and grazing;

(3) that to conserve soil resources and control and prevent soil erosion and prevent floodwater and sediment damages and further the conservation, development, utilization, and disposal of water, it is necessary that land use practices contributing to soil wastage and soil erosion be discouraged and discontinued and appropriate soil-conserving land use practices and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water be adopted and carried out; that among the procedures necessary for widespread adoption are the carrying on of engineering operations such as the construction of water spreaders, terraces, terrace outlets, check dams, desilting basins, floodwater retarding structures, channel improvements, floodways, land drainage, dikes, ponds, ditches, and the like; the utilization of strip cropping, lister furrowing, contour cultivating, and contour furrowing; land drainage; land irrigation; seeding and planting of waste, sloping, abandoned, or eroded lands with water-conserving and erosion-preventing plants, trees, and grasses; forestation and reforestation; rotation of crops, restriction of number of livestock grazed, deferred grazing, and rodent eradication; soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops; retardation of runoff by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.

History: En. Sec. 2, Ch. 72, L. 1939; amd. Sec. 1, Ch. 5, L. 1959; R.C.M. 1947, 76-102(A) thru (C); amd. Sec. 2525, Ch. 56, L. 2009.

76-15-102. Declaration of policy. It is hereby declared to be the policy of the legislature to provide for the conservation of soil and soil resources of this state, for the control and prevention of soil erosion, for the prevention of floodwater and sediment damages, and for furthering the conservation, development, utilization, and disposal of water and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state.

History: En. Sec. 2, Ch. 72, L. 1939; amd. Sec. 1, Ch. 5, L. 1959; R.C.M. 1947, 76-102(D).

76-15-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Agency of this state" includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state.

(2) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(3) "District" or "conservation district" means a governmental subdivision of this state and a public body corporate and politic organized in accordance with this chapter, for the purposes, with the powers, and subject to the restrictions set forth in this chapter.

(4) "Due notice" means notice published at least twice, with an interval of at least 14 days between the two publication dates, in a newspaper or other publication of general circulation within the proposed area or by posting at a reasonable number of conspicuous places within the appropriate area. The posting must include, when possible, posting at public places where it is customary to post notices concerning county or municipal affairs generally.

(5) "Government" or "governmental" includes the government of this state, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them.

(6) "Land occupier" or "occupier of land" includes a person, firm, corporation, municipality, or other entity that holds title to or is in possession of lands lying within a district organized under this chapter, whether as owner, lessee, renter, tenant, or otherwise.

(7) "Petition" means a petition filed under 76-15-201 for the creation of a district.

(8) "Qualified elector" means an elector as defined in Title 13.

(9) "Supervisor" means one of the members of the governing body of a district, elected or appointed in accordance with this chapter.

(10) "United States" or "agencies of the United States" includes the United States of America, the natural resource conservation service of the United States department of agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

History: En. Sec. 3, Ch. 72, L. 1939; amd. Sec. 2, Ch. 73, L. 1961; amd. Sec. 1, Ch. 146, L. 1967; amd. Sec. 2, Ch. 431, L. 1971; amd. Sec. 88, Ch. 253, L. 1974; R.C.M. 1947, 76-103(part); amd. Sec. 393, Ch. 571, L. 1979; amd. Sec. 269, Ch. 418, L. 1995.

76-15-104. Adjournment of hearings. At any hearing held pursuant to the notice, at the time and place designated in the notice, adjournment may be made from time to time without the necessity of renewing the notice for the adjourned dates.

History: En. Sec. 3, Ch. 72, L. 1939; amd. Sec. 2, Ch. 73, L. 1961; amd. Sec. 1, Ch. 146, L. 1967; amd. Sec. 2, Ch. 431, L. 1971; amd. Sec. 88, Ch. 253, L. 1974; R.C.M. 1947, 76-103(part).

76-15-105. Duties of department. In addition to the duties hereinafter conferred upon the department, it shall:

(1) offer assistance as may be appropriate to the supervisors of conservation districts in the carrying out of their powers and programs;

(2) keep the supervisors of each of the several districts informed of the activities and experiences of all other districts and facilitate an interchange of advice and experiences between the districts and cooperation between them;

(3) coordinate the programs of the several conservation districts hereunder so far as this may be done by advice and consultation;

(4) secure the cooperation and assistance of the United States and of agencies of this state in the work of the districts;

(5) disseminate information throughout the state concerning the activities and programs of the conservation districts; and

(6) encourage the formation of districts in areas where their organization is desirable.

History: En. Sec. 4, Ch. 72, L. 1939; amd. Sec. 1, Ch. 21, L. 1951; amd. Sec. 1, Ch. 47, L. 1967; amd. Sec. 1, Ch. 291, L. 1969; amd. Sec. 3, Ch. 431, L. 1971; amd. Sec. 89, Ch. 253, L. 1974; R.C.M. 1947, 76-104.

76-15-106. Conservation district account. There is a conservation district account in the state special revenue fund established by 17-2-102 to be administered by the department of natural resources and conservation for providing funding for conservation districts.

History: En. Sec. 6, Ch. 351, L. 2017; amd. Sec. 2, Ch. 138, L. 2021; amd. Sec. 2, Ch. 119, L. 2023.

76-15-107. Exemption from environmental review. The department is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when authorizing grants, loans, or bonds related to conservation, reclamation, and renewable resource activities pursuant to this part.

History: En. Sec. 1, Ch. 116, L. 2023.

76-15-108. Conservation district fund — conservation district special revenue account. (1) There is a conservation district fund administered by the department of administration. Pursuant to 17-5-703, a percentage of coal severance taxes received by the state must be deposited into this fund. Earnings not transferred to the conservation district account as provided in subsection (2) must be retained in the conservation district fund.

(2) The conservation district account established in 76-15-106 receives earnings from the conservation district fund as provided in 17-5-703.

History: En. Sec. 2, Ch. 717, L. 2023.

Part 2
Creation of Conservation Districts

76-15-201. Petition to create conservation district. (1) Any 10% of the qualified electors within the limits of the territory proposed to be organized into a district may file a petition with the department asking that the department approve the organization of a conservation district to function in the territory described in the petition.

(2) The petition must set forth:

(a) the proposed name of the district;

(b) that there is need in the interest of the public health, safety, and welfare for a conservation district to function in the territory described in the petition;

(c) a description of the territory proposed to be organized as a district, which description may not be required to be given by metes and bounds or by legal subdivisions but is sufficient if generally accurate;

(d) a request that:

(i) the department define the boundaries for the district;

(ii) a referendum be held within the territory defined on the question of the creation of a conservation district in the territory; and

(iii) the department determine that a district be created.

(3) Where more than one petition is filed covering parts of the same territory, the department may consolidate all or any part of the petitions.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(1), (2); amd. Sec. 1, Ch. 76, L. 1985; amd. Sec. 270, Ch. 418, L. 1995.

76-15-202. Hearing on petition. (1) Within 30 days after a petition has been filed with the department, it shall cause due notice to be given of a proposed hearing before the department upon the question of the desirability and necessity in the interest of the public health, safety, and welfare of the creation of the district; upon the question of the appropriate boundaries to be assigned to the district; upon the propriety of the petition and other proceedings taken under this chapter; and upon all questions relevant to those inquiries.

(2) All qualified electors within the limits of the territory described in the petition and of lands within any territory considered for addition to the described territory and all other interested parties are entitled to attend the hearings and be heard.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part).

Cross-References

Applicability of Montana Administrative Procedure Act, 2-4-107.

76-15-203. Hearing procedure if additional territory to be included. If it appears to the department after reviewing the record of the hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice of the hearing has been given, the department shall adjourn the hearing and shall cause due notice of a further hearing to be given throughout the entire area considered for inclusion in the district. The further hearing must be held by the department.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part); amd. Sec. 271, Ch. 418, L. 1995.

76-15-204. Determination of need for district. (1) After the hearing, if the department determines, upon the facts presented at the hearing and upon other relevant facts and information as may be available, that there is need, in the interest of the public health, safety, and welfare, for a conservation district to function in the territory considered at the hearing, it shall make and record that determination and shall define, by metes and bounds or by legal subdivisions, the boundaries of the district.

(2) If the department determines after the hearing, after due consideration of the relevant facts, that there is no need for a conservation district to function in the territory considered at the hearing, it shall make and record that determination and shall deny the petition. After 6 months have expired from the date of the denial of a petition, subsequent petitions covering the same or substantially the same territory may be filed and a new hearing held and determinations made on the petitions.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part); amd. Sec. 272, Ch. 418, L. 1995.

76-15-205. Criteria for determining need. In making the determinations and in defining the boundaries, the department shall consider the topography of the area considered and of the state, the composition of soils in the area, the distribution of erosion, the prevailing land use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits those lands may receive from being included within the boundaries, the relation of the proposed area to existing watersheds and agricultural regions

and other conservation districts already organized or proposed for organization under this chapter, and such other physical, geographical, and economic factors as are relevant, having due regard to the legislative determination set forth in 76-15-101 and 76-15-102. The territory to be included within the boundaries need not be contiguous.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part); amd. Sec. 273, Ch. 418, L. 1995.

76-15-206. Determination of administrative practicability of district. After the department has made and recorded a determination that there is need in the interest of the public health, safety, and welfare for the organization of a district in a particular territory and has defined the boundaries of the district, it shall consider the question whether the operation of a district within the boundaries with the powers conferred upon conservation districts in this chapter is administratively practicable and feasible.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part); amd. Sec. 274, Ch. 418, L. 1995.

76-15-207. Referendum on question of creating district. (1) To assist the department in the determination of administrative practicability and feasibility, the department shall, within a reasonable time after entry of the finding that there is need for the organization of the proposed district and the determination of the boundaries of the district, hold a referendum within the proposed district upon the proposition of the creation of the district and cause due notice of the referendum to be given.

(2) The question must be submitted by ballots upon which the words "For creation of a conservation district of the lands below described and lying in the county(ies) of ...., ..., and ...." and "Against creation of a conservation district of the lands below described and lying in the county(ies) of .... and ...." must appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of the propositions as the voter may favor or oppose creation of the district. The ballot must set forth the boundaries of the proposed district as determined by the department.

(3) All qualified electors within the boundaries of the territory, as determined by the department, are eligible to vote in the referendum.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part); amd. Sec. 275, Ch. 418, L. 1995.

76-15-208. Administration of hearings and referenda. (1) The department shall pay all expenses for the issuance of the notices and the conduct of the hearings and referenda and shall supervise the conduct of the hearings and referenda. It shall adopt appropriate rules governing the conduct of the hearings and referenda and providing for the registration prior to the date of the referendum of all eligible voters or prescribing some other appropriate procedure for the determination of those eligible as voters in the referendum.

(2) No informalities in the conduct of the referendum or in any matters relating thereto shall invalidate the referendum or the result thereof if notice thereof has been given substantially as herein provided and the referendum has been fairly conducted.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(5).

76-15-209. Procedure following referendum. (1) The department shall publish the result of the referendum, and shall consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible.

(2) If the department determines that the operation of the district is administratively practicable and feasible, it shall record that determination and proceed with the organization of the district in the manner provided in this chapter.

(3) If the department determines that the operation of the district is not administratively practicable and feasible, it shall record that determination and deny the petition. After 6 months have expired from the date of entry of a determination by the department that operation of a proposed district is not administratively practicable and feasible and denial of a petition pursuant to the determination, subsequent petitions may be filed and action taken on the petitions in accordance with this part.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part); amd. Sec. 276, Ch. 418, L. 1995.

76-15-210. Criteria for determining administrative practicability. (1) In making its determination, the department shall consider the attitudes of the qualified electors within the defined boundaries, the number of qualified electors eligible to vote in the referendum who voted, the proportion of the votes cast in the referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the qualified electors of the proposed district, the probable expense of carrying on erosion-control operations within the district, and other economic and social factors relevant to the determination, having due regard to the legislative determinations set forth in 76-15-101 and 76-15-102.

(2) The department may not determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible unless a majority of the votes cast in the referendum upon the proposition of creation of the district has been cast in favor of the creation of the district.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part); amd. Sec. 277, Ch. 418, L. 1995.

76-15-211. Appointment of supervisors. If the department determines that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint two supervisors to act with the three supervisors first elected, as provided in this part, as the initial governing body of the district.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part); amd. Sec. 278, Ch. 418, L. 1995.

76-15-212. Submission of application by appointed supervisors. The district is a governmental subdivision of this state and a public body, corporate and politic, upon the taking of the following proceedings:

(1) The two appointed supervisors shall present to the secretary of state an application signed by them, which must set forth:

(a) that a petition for the creation of the district was filed with the department pursuant to this chapter, that the proceedings specified in this chapter were taken pursuant to the petition, that the application is being filed in order to complete the organization of the district as a governmental subdivision and a public body, corporate and politic, under this chapter, and that the department has appointed them as supervisors;

(b) the name and official residence of each of the supervisors, together with a certified copy of the appointments evidencing their right to office;

(c) the term of office of each of the supervisors;

(d) the name which is proposed for the district; and

(e) the location of the principal offices of the supervisors of the district.

(2) The application must be subscribed and sworn to by each of the supervisors.

(3) (a) The application must be accompanied by a statement by the department which shall certify that:

(i) a petition was filed, notice issued, and hearing held as provided in this part;

(ii) the department determined that there is need in the interest of the public health, safety, and welfare for a conservation district to function in the proposed territory and defined the boundaries of the district;

(iii) notice was given and a referendum held on the question of the creation of the district; and

(iv) the result of the referendum showed a majority of the votes cast in the referendum to be in favor of the creation of the district and that the department determined that the operation of the proposed district is administratively practicable and feasible.

(b) The statement must also set forth the boundaries of the district as they have been defined by the department.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part); amd. Sec. 279, Ch. 418, L. 1995.

76-15-213. Processing of application by secretary of state. (1) The secretary of state shall examine the application and statement, and if the secretary of state finds that the name proposed for the district is not identical with that of any other conservation district of this state or so nearly similar as to lead to confusion or uncertainty, the secretary of state shall receive

and file the application and statement and shall record them in an appropriate book of record in the secretary of state's office.

(2) If the secretary of state finds that the name proposed for the district is identical with that of any other conservation district of this state or so nearly similar as to lead to confusion and uncertainty, the secretary of state shall certify that fact to the department. The department shall submit to the secretary of state a new name for the district which is not subject to the defects. Upon receipt of the new name free of defects, the secretary of state shall record the application and statement with the modified name in an appropriate book of record in the secretary of state's office.

(3) The secretary of state shall make and issue to the supervisors, without cost, a certificate under the seal of the state of the due organization of the district and shall record the certificate with the application and statement.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part); amd. Sec. 280, Ch. 418, L. 1995.

76-15-214. Evidentiary status of certificate issued by secretary of state. In a suit, action, or proceeding involving the validity or enforcement of or relating to a contract, proceeding, or action of the district, the district shall be considered to have been established in accordance with this chapter upon proof of the issuance of the certificate by the secretary of state. A copy of the certificate, duly certified by the secretary of state, is admissible in evidence in the suit, action, or proceeding and is proof of the filing and contents thereof.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(11).

76-15-215. District as governmental subdivision and public body. When the application and statement have been made, filed, and recorded as herein provided, the district is a governmental subdivision of this state and a public body, corporate and politic, exercising public powers.

History: Ap. p. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; Sec. 76-105, R.C.M. 1947; Ap. p. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; Sec. 76-108, R.C.M. 1947; R.C.M. 1947, 76-105(part), 76-108(part).

76-15-216. Limitation on territory included in district. The boundaries of the district must include the territory as determined by the department, but may not include any area included within the boundaries of another conservation district.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(part); amd. Sec. 281, Ch. 418, L. 1995.

Cross-References

Combination or division of districts, 76-15-803.

Part 3
Administration of Conservation Districts

76-15-301. Establishment of supervisor areas and reorganization of district governing bodies. (1) (a) A conservation district is authorized to divide the unincorporated area of the district into no more than five supervisor areas.

(b) Each supervisor area must be represented by one supervisor. If less than five supervisor areas are established, a sufficient number of supervisors must be elected at large to complete the governing body of the district as provided in 76-15-311(1).

(2) (a) In a district containing no incorporated municipalities that are completely within the boundaries of the district, the department shall, upon passage of a resolution by the district to transition to seven supervisors, reorganize the district as provided in 76-15-305 and this subsection (2).

(b) A district that is reorganized pursuant to this section may be divided into no more than seven supervisor areas.

(3) If provided by ordinance of the district, a supervisor must reside in the area the supervisor represents.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(12); (2)En. Sec. 1, Ch. 173, L. 1983; amd. Sec. 1, Ch. 473, L. 1983; amd. Sec. 2, Ch. 76, L. 1985; amd. Sec. 282, Ch. 418, L. 1995; amd. Sec. 1, Ch. 162, L. 2011.

76-15-302. Repealed. Sec. 262, Ch. 49, L. 2015.

History: En. Sec. 6, Ch. 72, L. 1939; amd. Sec. 5, Ch. 431, L. 1971; amd. Sec. 91, Ch. 253, L. 1974; amd. Sec. 2, Ch. 18, L. 1977; R.C.M. 1947, 76-106(part); amd. Sec. 3, Ch. 76, L. 1985; amd. Sec. 67, Ch. 44, L. 2007.

76-15-303. Election of supervisors — election by acclamation — appointment. (1) An election for supervisors must be conducted in accordance with Title 13, chapter 1, part 5.

(2) All qualified electors within the district are eligible to vote in the election.

(3) The candidate or, if more than one supervisor position is to be filled by the election, the candidates who receive the largest number, respectively, of the votes cast in the election are the elected supervisors for the district.

(4) The names of the candidates must be arranged on ballots as prescribed in 13-12-205.

History: En. Sec. 6, Ch. 72, L. 1939; amd. Sec. 5, Ch. 431, L. 1971; amd. Sec. 91, Ch. 253, L. 1974; amd. Sec. 2, Ch. 18, L. 1977; R.C.M. 1947, 76-106(part); amd. Sec. 369, Ch. 571, L. 1979; amd. Sec. 4, Ch. 76, L. 1985; amd. Sec. 2, Ch. 576, L. 1985; amd. Sec. 1, Ch. 184, L. 1995; amd. Sec. 10, Ch. 254, L. 1999; amd. Sec. 90, Ch. 414, L. 2003; amd. Sec. 239, Ch. 49, L. 2015.

76-15-304. Election of supervisors. (1) Two supervisors shall be elected at the second general election following the organization or reorganization of the district and shall replace the two supervisors appointed by the department. Thereafter, a district shall alternately elect three and two supervisors at succeeding general elections.

(2) An election for supervisors must be conducted in accordance with Title 13, chapter 1, part 5.

History: En. Sec. 6, Ch. 72, L. 1939; amd. Sec. 5, Ch. 431, L. 1971; amd. Sec. 91, Ch. 253, L. 1974; amd. Sec. 2, Ch. 18, L. 1977; R.C.M. 1947, 76-106(2); amd. Sec. 240, Ch. 49, L. 2015.

76-15-305. Transition to seven supervisors. (1) At the time of reorganization under 76-15-301(2), the department shall appoint:

(a) one supervisor for a term to coincide with the terms of those elected supervisors whose terms will expire after the next general election; and

(b) one supervisor for a term to coincide with the terms of those elected supervisors whose terms will expire after the general election following the next general election.

(2) The supervisor positions held by the appointed supervisors become open for election at the time the terms expire. A district having seven supervisors shall alternately elect four and three supervisors at succeeding general elections.

History: En. Sec. 2, Ch. 173, L. 1983; amd. Sec. 283, Ch. 418, L. 1995; amd. Sec. 241, Ch. 49, L. 2015.

76-15-306 through 76-15-310 reserved.

76-15-311. Governing body of district. (1) If there are no incorporated municipalities that are completely within the boundaries of the district, the governing body of the district must consist of five elected supervisors unless the district has been reorganized pursuant to 76-15-301(2) and 76-15-305.

(2) If there are incorporated municipalities that are completely within the boundaries of the district, the governing body of the district must consist of seven supervisors as follows:

(a) The board of supervisors, in addition to five elected supervisors, must consist of two appointed supervisors, making a total of seven supervisors in those districts. The legislative bodies of the incorporated municipalities within the district shall appoint the two additional supervisors after consultation with the elected supervisors.

(b) Where there are two or more incorporated municipalities that are completely within the boundaries of a district, the two appointed supervisors shall represent all the municipalities and urban interests in the district. A municipality may not have more than one appointed supervisor residing in the municipality. The legislative bodies of the incorporated municipalities within the district shall agree on the persons appointed to serve as the appointed supervisors.

(3) If there are no incorporated municipalities that are completely within the boundaries of the district but a portion of one or more incorporated municipalities is within the boundaries of a district, the elected supervisors may pass a resolution to transition to a board of seven members consisting of five elected supervisors and two supervisors appointed by the legislative bodies of the partially included municipalities as provided in subsection (2).

(4) A supervisor appointed under subsection (2) or (3) may live outside the municipality the supervisor represents, but the supervisor must reside within the boundaries of the district.

(5) An elected supervisor must reside within the boundaries of the district.

(6) The board of supervisors may appoint associate supervisors it considers necessary to advise the board of supervisors on the operation of the conservation district as provided in part 4 of this chapter.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(1) thru (3); amd. Sec. 17, Ch. 266, L. 1979; amd. Sec. 3, Ch. 173, L. 1983; amd. Sec. 2, Ch. 473, L. 1983; amd. Sec. 2, Ch. 162, L. 2011; amd. Sec. 242, Ch. 49, L. 2015.

76-15-312. Term of office and vacancies. (1) (a) The term of office of each supervisor is 4 years, except as provided in subsection (1)(b).

(b) The supervisors who are appointed by the department pursuant to 76-15-305 must be designated to serve for terms of 2 years from the date of their appointment, after which the offices must be filled by election. A supervisor appointed pursuant to 76-15-311 shall serve a term of 3 years.

(c) An elected supervisor holds office until a successor has been elected and has qualified.

(2) A vacancy is created when any of the following events occurs before the expiration of the term of the incumbent:

(a) death;

(b) a determination pursuant to Title 53, chapter 21, part 1, that the incumbent is mentally ill;

(c) resignation;

(d) removal from office;

(e) unexcused absence from three consecutive regular meetings of the board of supervisors;

(f) ceasing to reside in the district;

(g) conviction of a felony or a violation of official duties; or

(h) the decision of a court declaring void the incumbent's election or appointment.

(3) For the purpose of subsection (2)(e), a majority vote of the board of supervisors may excuse a supervisor from attending a meeting.

(4) A vacancy occurring in the office of an elected supervisor must be filled by appointment by the remaining supervisors until the next election, when a successor must be elected to serve the unexpired term. The election must be conducted in accordance with Title 13, chapter 1, part 5, in the year following the appointment.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(part); amd. Sec. 1, Ch. 223, L. 1989; amd. Sec. 2526, Ch. 56, L. 2009; amd. Sec. 3, Ch. 162, L. 2011; amd. Sec. 243, Ch. 49, L. 2015.

76-15-313. Operation of supervisors. (1) The supervisors shall annually elect a presiding officer from their members.

(2) A majority of the supervisors constitute a quorum, and except as otherwise specifically provided, the concurrence of a majority in any matter within their duties is required for its determination.

(3) Upon the unanimous approval of the board of supervisors, a supervisor may receive compensation for the supervisor's services, including travel expenses as provided for in 2-18-501 through 2-18-503, incurred in the discharge of the supervisor's duties. However, a supervisor may not receive compensation for attendance at a regularly scheduled meeting of the board of supervisors.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(part); amd. Sec. 2, Ch. 533, L. 1979; amd. Sec. 3, Ch. 473, L. 1983; amd. Sec. 2527, Ch. 56, L. 2009.

76-15-314. Removal of a supervisor. A supervisor may be removed by the department and a vacancy created under 76-15-312(2)(d), upon notice and hearing, for neglect of duty or malfeasance in office but for no other reason.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(part); amd. Sec. 2, Ch. 223, L. 1989; amd. Sec. 284, Ch. 418, L. 1995.

76-15-315. Administrative functions of supervisors. (1) The supervisors may employ a secretary and other officers, agents, and employees, permanent and temporary, that they may require and shall determine their qualifications, duties, and compensation.

(2) The supervisors may delegate to their presiding officer, to one or more supervisors, or to one or more agents or employees powers and duties that they consider proper.

(3) The supervisors shall furnish to the department copies of ordinances, rules, orders, contracts, forms, and other documents that they adopt or employ and other information concerning their activities that may be required in the performance of their duties under this chapter.

(4) The supervisors shall:

(a) provide for the execution of surety bonds for all employees and officers who are entrusted with funds or property;

(b) provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and

(c) provide for an annual audit of the accounts of receipts and disbursements.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(part); amd. Sec. 2528, Ch. 56, L. 2009.

76-15-316. Cooperation with municipalities and counties. The supervisors may invite the governing body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of the municipality or county.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(7).

76-15-317. Cooperation with state agencies. Agencies of this state which shall have jurisdiction over or be charged with the administration of any state-owned lands and of any county or other governmental subdivision of the state, which shall have jurisdiction over or be charged with the administration of any county-owned or other publicly owned lands lying within the boundaries of any district organized hereunder shall cooperate to the fullest extent with the supervisors of such districts in the effectuation of programs and operations undertaken by the supervisors under the provisions of this chapter. The supervisors of such districts shall be given free access to enter and perform work upon such publicly owned lands. The provisions of land use regulations adopted pursuant to 76-15-701 through 76-15-707 shall have the force and effect of law over all such publicly owned lands and shall be in all respects observed by the agencies administering such lands.

History: En. Sec. 13, Ch. 72, L. 1939; R.C.M. 1947, 76-113.

76-15-318. Cooperation between districts. The supervisors of any two or more districts organized under the provisions of this chapter may cooperate with one another in the exercise of any or all powers conferred in this chapter.

History: En. Sec. 12, Ch. 72, L. 1939; R.C.M. 1947, 76-112.

76-15-319. Legal assistance. (1) The supervisors may call upon the county attorney of the county in which the greatest portion of the district is located or the attorney general of the state for the legal services they may require, or they may employ their own counsel and legal staff.

(2) If the county attorney is unable to provide legal assistance because of a conflict of interest, then the matter may be referred to the attorney general or the department.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977; R.C.M. 1947, 76-107(part); amd. Sec. 3, Ch. 533, L. 1979; amd. Sec. 4, Ch. 473, L. 1983; amd. Sec. 285, Ch. 418, L. 1995.

Cross-References

County Attorney to act as counsel for district, 7-4-2711.

76-15-320. Legal status of district — immunity. (1) A conservation district and the supervisors of a conservation district may:

(a) sue and be sued in the name of the district;

(b) satisfy a judgment or settlement pursuant to 2-9-316;

(c) have a seal that is judicially noticed;

(d) have perpetual succession unless terminated as provided in this chapter;

(e) implement Title 75, chapter 7, part 1; and

(f) make and execute contracts and other instruments necessary or convenient to the exercise of its powers.

(2) A conservation district, conservation district supervisor, or conservation district employee is immune from suit for any liability that might otherwise be incurred or imposed for an act or omission committed while engaged in conservation district activities pursuant to Title 75, chapter 7, part 1, or this chapter, unless the act or omission constitutes gross negligence, was committed in bad faith, or was committed with malicious purpose.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(part); amd. Sec. 2, Ch. 23, L. 1999.

76-15-321. Rulemaking authority. A conservation district and the supervisors thereof shall have the power to make and from time to time amend and repeal rules to carry into effect the purposes and powers of this chapter.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(part); amd. Sec. 18, Ch. 266, L. 1979.

Cross-References

Applicability of Montana Administrative Procedure Act, Title 2, ch. 4.

76-15-322. Filing of notice of organization of district. Within 10 days after the creation of the district, the supervisors of a conservation district shall cause a notice declaring the district organized to be filed for record in the office of the county clerk and recorder of each county in which any portion of the district is situated.

History: En. Sec. 1, Ch. 253, L. 1963; amd. Sec. 3, Ch. 291, L. 1969; amd. Sec. 14, Ch. 431, L. 1971; R.C.M. 1947, 76-201(part).

76-15-323. Repealed. Sec. 1, Ch. 65, L. 2017.

History: En. Sec. 2, Ch. 253, L. 1963; amd. Sec. 1, Ch. 152, L. 1965; R.C.M. 1947, 76-202.

76-15-324. Minutes. The board of supervisors shall submit the minutes of its proceedings for electronic storage within 30 days after the minutes have been approved by that body for electronic storage and retention in accordance with the provisions of Title 2, chapter 6, part 12. The board of supervisors shall submit the minutes for electronic storage to the county clerk and recorder of each county within the jurisdiction of the district.

History: En. Sec. 22, Ch. 262, L. 2015.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records, Title 2, ch. 6.

Part 4
Operation of Conservation Districts

76-15-401. Study of problems relating to soil and water conservation. (1) A conservation district and the supervisors thereof shall have the power to:

(a) conduct surveys, investigations, and research relating to the character of soil erosion, floodwater and sediment damages, and water quality as it pertains to saline seep and to the conservation, development, utilization, and disposal of water and the preventive and control measures and works of improvement needed;

(b) publish the results of such surveys, investigations, or research; and

(c) disseminate information concerning such preventive and control measures and works of improvement.

(2) In order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the government of this state or any of its agencies or with the United States or any of its agencies.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(1).

76-15-402. Development of soil and water conservation plans. A conservation district and the supervisors thereof shall have the power to:

(1) develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion and for flood prevention and conservation, development, utilization, and disposal of water within the district, which plans shall specify in such detail as may be possible the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, range management, methods of cultivation, the growing of vegetation, cropping, range programs, tillage and grazing practices, and changes in use of land; and

(2) publish such plans and information and bring them to the attention of occupiers of lands within the district.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(8).

76-15-403. Operation of projects and works. A conservation district and the supervisors of the conservation district may:

(1) conduct soil, vegetation, and water resources conservation projects on lands within the districts upon obtaining the consent of the owner of the lands or the necessary rights or interest in the lands;

(2) carry out preventive and control measures and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water, including but not limited to engineering operations, range management, methods of cultivation, growing vegetation, changes in use of land, and the measures listed in 76-15-101(3) on:

(a) lands within the district and owned or controlled by the state with the cooperation of the agency administering and having jurisdiction of the lands; or

(b) any other lands within the district upon obtaining the consent of the occupier of the lands or the necessary rights or interests in the lands;

(3) cooperate or enter into agreements with and, within the limits of appropriations duly made available to it by law, furnish financial or other aid to any governmental or other agency or any occupier of lands within the district, subject to any conditions that the supervisors consider necessary to advance the purposes of this chapter, to conduct or complete:

(a) erosion control and prevention operations; and

(b) works of improvement for flood prevention and the conservation, development, utilization, and disposal of water within the district;

(4) construct, improve, operate, and maintain any structures that are necessary or convenient for the performance of any of the operations authorized in this chapter;

(5) purchase, lease, or otherwise take over and administer projects undertaken by the United States or the state within the district boundaries for:

(a) soil conservation;

(b) flood prevention;

(c) drainage;

(d) irrigation;

(e) water management;

(f) erosion control; or

(g) erosion prevention;

(6) manage, as agent of the United States or of the state any of the types of projects identified in subsection (5) within its boundaries;

(7) act as agent for the United States or for the state in connection with the acquisition, construction, operation, or administration of any of the types of projects identified in subsection (5) within its boundaries;

(8) accept donations, gifts, and contributions in money, services, materials, or otherwise from the United States, from the state, or from any other source and use or expend funds or other contributions to conduct its operations;

(9) execute its duties and responsibilities under Title 75, chapter 7, part 1, pursuant to the procedures of this chapter; or

(10) execute projects for the conservation, development, storage, distribution, and utilization of water, including but not limited to projects for the following purposes:

(a) irrigation;
(b) flood prevention;
(c) drainage;
(d) fish and wildlife;
(e) recreation;
(f) development of power; or
(g) supplying water for fire protection, livestock, or public, domestic, industrial, or other uses.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(2) thru (4), (7), (9); amd. Sec. 3, Ch. 23, L. 1999.

76-15-404. Acquisition and management of property. (1) A conservation district and the supervisors thereof shall have the power to obtain options upon and to acquire by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise any property (real or personal) or rights or interests therein; to maintain, administer, and improve any properties acquired; to receive income from such properties; to expend such income in carrying out the purposes and provisions of this chapter; and to sell, lease, or otherwise dispose of any of its property or interests therein in furtherance of the purposes and provisions of this chapter.

(2) All such property shall be exempt from taxation by the state or any political subdivision thereof.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(5).

76-15-405. Limitation on acquisition, operation, or disposition of property. No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(B).

76-15-406. Furnishing of supplies and equipment. A conservation district and the supervisors thereof shall have the power to make available to land occupiers within the district, on such terms as it shall prescribe, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and such other material or equipment as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion, and for flood prevention and the conservation, development, utilization, and disposal of water.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(6).

76-15-407. Selection and acquisition of water storage sites. (1) Each conservation district within the state shall seek and may select at least one off-stream water storage site for the construction of a reservoir.

(2) If funding is available for a reservoir or other reclamation project, the conservation district shall acquire the site by purchase.

(3) Supervisors of conservation districts may designate sites for future construction of reservoirs. The supervisors shall designate such site by filing a legal description thereof in the office of the clerk and recorder of the county in which the site is located or the counties in which the site is located if it extends across the boundaries of two or more counties. Upon filing of such designation, the state of Montana, its agencies, or political subdivisions may not acquire the properties so designated for public purposes other than reservoir sites and may not construct any public facilities except reservoirs. Supervisors may cancel a site designation by filing notice with the clerk and recorder of the county or counties affected.

History: En. 76-118 by Sec. 1, Ch. 418, L. 1977; R.C.M. 1947, 76-118.

76-15-408. Funding of storage reservoirs. Each district shall seek funding for the construction of off-stream storage reservoirs, especially funding from the natural resources projects state special revenue account. The department shall provide assistance, both administrative and technical, in the preparation of grant and funding applications by the districts.

History: En. 76-119 by Sec. 2, Ch. 418, L. 1977; R.C.M. 1947, 76-119; amd. Sec. 286, Ch. 418, L. 1995; amd. Sec. 114, Ch. 2, L. 2009.

76-15-409. Purposes of off-stream storage. The reservoirs shall provide water storage for appropriators within the conservation district and shall provide water for additional beneficial uses. The reservoir may be part of a federal reclamation project and may be used to provide flood control in the district.

History: En. 76-120 by Sec. 3, Ch. 418, L. 1977; R.C.M. 1947, 76-120.

76-15-410. Disposition of excess water. (1) The conservation district may dispose of water in excess of that needed to meet the requirements of prior appropriators by selling the excess water to any person who will apply the water to an agreed beneficial use within the state.

(2) In making sales under this section, the district shall allocate water on the basis of priorities established by each local district in accordance with 76-15-701 through 76-15-707 according to need and beneficial use.

History: En. 76-121 by Sec. 4, Ch. 418, L. 1977; R.C.M. 1947, 76-121.

76-15-411. Conditions to extend benefits to nonstate lands. As a condition to the extending of any benefits under this chapter to or the performance of work upon any lands not owned or controlled by this state or any of its agencies, the supervisors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits and may require land occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion and prevent floodwater and sediment damages thereon.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(11).

Part 5
Financial Aspects of Conservation Districts
Loan Program

76-15-501. Financial management. A conservation district and the supervisors of the conservation district may:

(1) borrow money and incur indebtedness and issue bonds or other evidence of indebtedness;

(2) refund or retire an indebtedness or lien against the district or property of the district;

(3) establish and collect rates, fees, tolls, rents, or other charges for the use of facilities or for services or materials provided. Revenue from these sources may be expended in carrying out the purposes and provisions of this chapter.

(4) subject to 15-10-420, levy taxes as provided in this part to pay any obligation of the district and to accomplish the purposes of this chapter as provided in this chapter;

(5) apply for and receive federal revenue sharing funds in order to carry out the purposes and provisions of this chapter;

(6) establish a conservation practice loan program as provided in this part; or

(7) apply for, accept, administer, and expend funds, grants, and loans from the state or federal government or any other source.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977; R.C.M. 1947, 76-108(A)(12) thru (15); amd. Sec. 18, Ch. 473, L. 1983; amd. Sec. 4, Ch. 23, L. 1999; amd. Sec. 146, Ch. 584, L. 1999.

76-15-502. Allocation of state funds among districts. (1) Unless otherwise provided by law, all money which may from time to time be appropriated out of the state treasury to pay the administrative and other expenses of conservation districts shall be allocated by the department among the districts already organized or to be organized during the ensuing biennial fiscal period.

(2) In making allocations of the money, the department shall retain an amount estimated by it to be adequate to enable it to make subsequent allocations in accordance with this section and 76-15-503 from time to time among districts which may be organized after the initial allocations are made but within the ensuing biennial fiscal period.

History: En. Sec. 15, Ch. 72, L. 1939; amd. Sec. 12, Ch. 431, L. 1971; amd. Sec. 95, Ch. 253, L. 1974; R.C.M. 1947, 76-115(part); amd. Sec. 5, Ch. 473, L. 1983; amd. Sec. 5, Ch. 76, L. 1985.

76-15-503. Permissible uses of state money. All money allocated to a district by the department shall be available to the supervisors of the district for all administrative and other expenses of the district under this chapter and for all administrative and other expenses of the board of adjustment established or to be established by the district.

History: En. Sec. 15, Ch. 72, L. 1939; amd. Sec. 12, Ch. 431, L. 1971; amd. Sec. 95, Ch. 253, L. 1974; R.C.M. 1947, 76-115(part).

76-15-504. Repealed. Sec. 8, Ch. 76, L. 1985.

History: En. Sec. 15, Ch. 72, L. 1939; amd. Sec. 12, Ch. 431, L. 1971; amd. Sec. 95, Ch. 253, L. 1974; R.C.M. 1947, 76-115(3).

76-15-505. Authorization to borrow money — limitations. (1) If, after the levy of the annual assessments for the current year, the board of supervisors finds that, because of some unusual or unforeseen cause, funds raised through the collection of the assessments and from other sources will not be sufficient for the proper maintenance and operation of the district and the works in the district, the board of supervisors may:

(a) borrow additional funds needed in an amount not to exceed 50 cents per acre for the lands within the district and may pledge the credit of the district for the payment of the funds; or

(b) request the county commissioners to issue and register warrants in anticipation of further collections.

(2) Subject to 15-10-420, the board of supervisors shall include in the levy for the ensuing year the amount required to pay the loan or to retire the warrants. The warrants may not exceed 90% of the assessment for the year.

History: En. Sec. 12, Ch. 291, L. 1969; R.C.M. 1947, 76-220; amd. Sec. 287, Ch. 418, L. 1995; amd. Sec. 196, Ch. 574, L. 2001.

76-15-506. Bonds authorized — election. (1) Whenever a board of supervisors deems it necessary, it may issue bonds payable from revenues, assessments, or both, or the district may use other financing as provided for by this part and part 6 for the cost of works.

(2) The board of supervisors may call an election to be held in accordance with Title 13, chapter 1, part 5.

(3) If from the returns of the election it appears that the majority of votes cast at the election was in favor of and assented to the incurring of the indebtedness, then the board of supervisors may by resolution provide for the issuance of the bonds.

(4) The issuance of bonds must be carried out in accordance with 7-7-4426 and 7-7-4432 through 7-7-4435. The validity of the bonds, use of the bond revenue, and the refunding of the bonds must be done in accordance with the provisions of 7-7-4425, 7-7-4430, 7-7-4501(2) and (3), and 7-7-4502 through 7-7-4505.

(5) Any bonds issued under this part and part 6 have the same force, value, and use as bonds issued by a municipality and are exempt from taxation as property within the state of Montana.

History: En. Sec. 15, Ch. 291, L. 1969; amd. Sec. 19, Ch. 431, L. 1971; R.C.M. 1947, 76-223; amd. Sec. 394, Ch. 571, L. 1979; amd. Sec. 244, Ch. 49, L. 2015.

76-15-507. Investment of funds. The board of supervisors shall have the power and authority to direct the investment of funds in a debt service fund in interest-bearing securities whenever in their judgment the same may be to the best interests of the district. But all such securities shall be converted into cash in time to meet the principal on the bonds payable from such debt service fund promptly at their maturity.

History: En. Sec. 13, Ch. 291, L. 1969; R.C.M. 1947, 76-221; amd. Sec. 28, Ch. 298, L. 1983.

76-15-508. Management of surplus funds. The board of supervisors of a conservation district may invest any surplus funds of the district not needed for immediate use in the operations of the district or its activities, to pay bonds or coupons, or to meet current expenses in interest-bearing bonds or securities of the United States or of any agency of the United States if the bonds are guaranteed by the United States or in bonds of the state of Montana or any county or municipal corporation in said state. The board of supervisors of said district may require any funds of the district to be deposited with such depository or bank as may be designated by the board and likewise shall have authority to require the treasurer of the district to take from such

depository a bond with corporate surety to ensure payment of any such deposit or to require such depository to pledge securities of the same kind as the district is authorized to invest its funds in to ensure payment of any such deposit.

History: En. Sec. 14, Ch. 291, L. 1969; amd. Sec. 18, Ch. 431, L. 1971; R.C.M. 1947, 76-222; amd. Sec. 1, Ch. 135, L. 1991.

76-15-509 and 76-15-510 reserved.

76-15-511. Estimate of money to be raised by assessment. The supervisors of the district shall on or before the first Monday of July of each year furnish the board of county commissioners an estimate in writing of the amount of money to be raised by assessment which is needed for the next ensuing fiscal year.

History: En. Sec. 4, Ch. 253, L. 1963; amd. Sec. 2, Ch. 152, L. 1965; R.C.M. 1947, 76-204.

76-15-512. Expenses to be covered by estimate. The total amount of the estimate shall be sufficient to raise the amount of money necessary during the ensuing year to pay the incidental expenses of the district and to fund a conservation practice loan program in those districts having elected to establish such a program.

History: En. Sec. 6, Ch. 253, L. 1963; amd. Sec. 5, Ch. 291, L. 1969; R.C.M. 1947, 76-206; amd. Sec. 19, Ch. 473, L. 1983.

76-15-513. Division between counties of money to be raised by regular and special assessment. (1) If the district lies in more than one county, the supervisors of the district shall divide the amount of the estimate of the regular assessment in the proportion to the value of the land in the district lying in each county. The value shall be determined from the last assessment rolls of the counties. The supervisors shall furnish the boards of county commissioners of each of the respective counties a statement of the part of the estimate apportioned to the county.

(2) The estimates of the special assessments shall be divided in proportion to the value of land lying within the project area.

History: En. Sec. 5, Ch. 253, L. 1963; amd. Sec. 4, Ch. 291, L. 1969; R.C.M. 1947, 76-205.

76-15-514. Regular and special assessments. Assessments levied pursuant to this part and part 6 shall be known as regular and special assessments.

History: En. Sec. 7, Ch. 253, L. 1963; amd. Sec. 6, Ch. 291, L. 1969; R.C.M. 1947, 76-207.

76-15-515. Regular assessment. The regular assessment in any 1 year is subject to 15-10-420. The valuation must be determined according to the last assessment roll.

History: En. Sec. 8, Ch. 253, L. 1963; amd. Sec. 3, Ch. 152, L. 1965; amd. Sec. 7, Ch. 291, L. 1969; amd. Sec. 15, Ch. 431, L. 1971; R.C.M. 1947, 76-208; amd. Sec. 6, Ch. 473, L. 1983; amd. Sec. 3, Ch. 573, L. 1993; amd. Sec. 1, Ch. 36, L. 2009.

76-15-516. Levy of regular and special assessments. (1) Subject to 15-10-420, the board of county commissioners of each county in which any portion of the district lies may, annually at the time of levying county taxes, levy an assessment on the taxable real property within the district. The levy must be known as the ".... (name of district) conservation district regular assessment" and must be sufficient to raise the amount reported to the county commissioners in the estimate of the supervisors.

(2) Subject to the conditions of 15-10-420, 76-15-531, and 76-15-532, the board of county commissioners of each county in which any portion of the district lies may, annually at the time of levying county taxes, levy an assessment on the taxable real property within the district. The levy must be known as the ".... (name of district) conservation district special administrative assessment" and must be sufficient to raise the amount reported to the county commissioners in the estimate of the supervisors.

(3) Subject to 15-10-420, the board of county commissioners of each county in which any portion of a project area lies may, annually at the time of levying county taxes, levy an assessment on the taxable value of all taxable property located within the project area. The levy must be known as ".... (name of the project area) special assessment" and must be sufficient to raise the amount reported to the county commissioners in the estimate of the supervisors.

History: En. Sec. 9, Ch. 253, L. 1963; amd. Sec. 4, Ch. 152, L. 1965; amd. Sec. 8, Ch. 291, L. 1969; amd. Sec. 16, Ch. 431, L. 1971; R.C.M. 1947, 76-209; amd. Sec. 7, Ch. 473, L. 1983; amd. Sec. 4, Ch. 573, L. 1993; amd. Sec. 147, Ch. 584, L. 1999; amd. Sec. 197, Ch. 574, L. 2001.

76-15-517. Repealed. Sec. 2, Ch. 71, L. 2017.

History: En. Sec. 10, Ch. 253, L. 1963; amd. Sec. 5, Ch. 152, L. 1965; amd. Sec. 9, Ch. 291, L. 1969; amd. Sec. 17, Ch. 431, L. 1971; R.C.M. 1947, 76-210; amd. Sec. 8, Ch. 473, L. 1983.

76-15-518. Certification of assessment to department of revenue — entry on property tax record. Subject to 15-10-420, the board of county commissioners of each county in which any portion of the district is situated may levy the assessment provided in part 6 or this part. The assessment must be certified to the department of revenue and entered on the property tax record of each county.

History: En. Sec. 11, Ch. 253, L. 1963; R.C.M. 1947, 76-211; amd. Sec. 139, Ch. 27, Sp. L. November 1993; amd. Sec. 148, Ch. 584, L. 1999.

76-15-519. Application of general law on levy and collection. The provisions of law relating to the levy and collection of county taxes and the duties of county officers with respect thereto, insofar as they are applicable and not in conflict with this part and part 6, are hereby adopted and made a part hereof.

History: En. Sec. 12, Ch. 253, L. 1963; R.C.M. 1947, 76-212(part).

Cross-References

County taxation, Title 7, ch. 6, part 25.

76-15-520. Liability of county officers. The county officers referred to in 76-15-519 are liable on their several official bonds for the faithful discharge of their duties under this part and part 6.

History: En. Sec. 12, Ch. 253, L. 1963; R.C.M. 1947, 76-212(part).

Cross-References

Official bonds of county officers, 7-4-2212.

76-15-521. Principal county defined. "Principal county" as used in this part means the county in which all or the greatest portion of the land of a district is situated. The principal county remains the same regardless of any change in boundaries.

History: En. Sec. 13, Ch. 253, L. 1963; R.C.M. 1947, 76-213.

76-15-522. Settlements by county treasurers other than of principal county. The treasurers of each of the counties other than the principal county shall, not less than twice a year or upon order of the supervisors of the district, settle with such supervisors and pay to the treasurer of the principal county all money belonging to the district and in their possession.

History: En. Sec. 14, Ch. 253, L. 1963; R.C.M. 1947, 76-214.

76-15-523. Depository of district funds. The treasury of the principal county is the depository of all of the county tax funds of the district. The district may receive upon demand all or a portion of the district funds from the county treasury and deposit the funds in a bank or financial institution in such account as the board of supervisors considers appropriate for the operation and administration of the district.

History: En. Sec. 15, Ch. 253, L. 1963; amd. Sec. 10, Ch. 291, L. 1969; R.C.M. 1947, 76-215; amd. Sec. 9, Ch. 473, L. 1983.

76-15-524. Receipt and crediting of district funds — responsibility on bond. The treasurer of the principal county shall receive and receipt for all county tax money of the district and for conservation practice loan repayments, including principal, interest, if any, administrative fees or charges for loans, and interest paid and collected on deposits or investments under a conservation practice loan program and place the same to the credit of the district. The treasurer is responsible for the official bond and for its safekeeping and disbursement, in the manner provided in this part and part 6, of the money of the district held by the treasurer.

History: En. Sec. 16, Ch. 253, L. 1963; amd. Sec. 11, Ch. 291, L. 1969; R.C.M. 1947, 76-216; amd. Sec. 20, Ch. 473, L. 1983; amd. Sec. 1, Ch. 141, L. 1997.

76-15-525. Payment of district money — warrants. The treasurer of the principal county shall pay out money of the district only upon warrants of the county auditor or, in those counties not having an auditor, the county clerk and recorder, drawn upon order of the supervisors of the district and signed by at least two of such supervisors.

History: En. Sec. 17, Ch. 253, L. 1963; R.C.M. 1947, 76-217.

76-15-526. Treasurer's reports. The treasurer shall report in writing at each regular meeting of the supervisors and as often at other times as the supervisors may request the amount of money on hand and the receipts and disbursements since the treasurer's last report. The report must be verified.

History: En. Sec. 18, Ch. 253, L. 1963; R.C.M. 1947, 76-218; amd. Sec. 2529, Ch. 56, L. 2009.

76-15-527. Purpose of expenditures. All money collected under 76-15-511 through 76-15-516, 76-15-518 through 76-15-526, 76-15-531, and 76-15-532 must be expended for the purposes provided in Title 76, chapter 15.

History: En. Sec. 19, Ch. 253, L. 1963; R.C.M. 1947, 76-219; amd. Sec. 21, Ch. 473, L. 1983; amd. Sec. 5, Ch. 573, L. 1993; amd. Sec. 1, Ch. 71, L. 2017.

76-15-528. Lien for special assessments. Any special assessment made and levied to defray the cost and expenses of any of the work enumerated in this chapter, together with any percentages imposed for delinquency and for cost of collection, shall constitute a lien against the property upon which such assessment is levied from the date on which such assessment is levied. This lien can only be extinguished by payment of such assessment with all penalties, costs, and interest.

History: En. Sec. 23, Ch. 291, L. 1969; R.C.M. 1947, 76-231; amd. Sec. 19, Ch. 266, L. 1979.

Cross-References

Liens, Title 71, ch. 3.

76-15-529. Assessments unaffected by misnomers and mistakes relating to ownership. When under the provisions of this part and part 6 special taxes and assessments are assessed against any lot or parcel of land as the property of a particular person, no misnomer of the owner or supposed owner or other mistake relating to the ownership thereof shall affect such assessment or render it void or voidable.

History: En. Sec. 24, Ch. 291, L. 1969; R.C.M. 1947, 76-232.

76-15-530. Conservation district appropriations — administration. (1) The state treasurer shall draw warrants payable from appropriations of allocations authorized as provided under 15-35-108 on order from the department.

(2) The department shall administer the conservation district appropriations referred to in subsection (1). The money must be distributed to the conservation districts on the basis of need. A conservation district may submit an application to the department for a grant of funds for purposes that conservation districts are authorized to perform.

(3) A conservation district is not eligible to receive a grant unless it has exhausted its authorized mill levies.

(4) The department may adopt rules implementing this section that provide for the form and content of applications and the criteria, terms, and conditions for making grants.

History: En. Sec. 2, Ch. 479, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 288, Ch. 418, L. 1995; amd. Sec. 67, Ch. 509, L. 1995.

76-15-531. Special administrative assessment permitted — voter approval. (1) (a) In addition to the levy authorized in 76-15-515 and 76-15-516(3), the supervisors of a conservation district may levy an annual special administrative assessment for administrative costs and expenses of the district if the qualified electors of the district approve the imposition of the additional assessment at an election held as provided in 15-10-425.

(b) Nonmill-levy revenue that is distributed based on the relative proportion of mill levies may not be distributed to the special administrative assessment.

(2) The special administrative assessment question may be presented to the qualified electors of the district by resolution of the supervisors.

(3) If the conservation district is located in more than one county, the special administrative assessment question must be presented to and approved by the qualified electors who reside in the district from each county.

(4) The resolution referring the special administrative assessment question must state:

(a) the rate of the assessment;

(b) the amount of money anticipated to be raised by the assessment; and

(c) the purposes for which the special administrative assessment revenue may be used.

History: En. Sec. 1, Ch. 573, L. 1993; amd. Sec. 32, Ch. 495, L. 2001; amd. Sec. 198, Ch. 574, L. 2001.

76-15-532. Limitations — reduction or repeal of special administrative assessment. (1) In each year following the approval of the special administrative assessment as provided in 76-15-531, the rate of the levy imposed for the special administrative assessment may not raise more revenue than was proposed in the resolution and approved by the qualified electors of the district.

(2) If the supervisors of the district reduce the amount of the special administrative assessment, they may not raise the assessment without the approval of the qualified electors of the district.

(3) On or before the second Monday in July, a petition, signed by at least 50% of the eligible voters within the district, calling for a reduction in or the repeal of the special administrative assessment for the ensuing fiscal year may be presented to the supervisors. Following verification of the signatures on the petition, the supervisors shall reduce or repeal the administrative assessment as specified in the petition.

History: En. Sec. 2, Ch. 573, L. 1993.

76-15-533 through 76-15-540 reserved.

76-15-541. Conservation practice loan program — definition. (1) A conservation district may establish and administer a conservation practice loan program pursuant to 76-15-541 through 76-15-547.

(2) A conservation practice loan may be made to a land occupier who is an agriculture producer within the exterior boundaries of the district. The conservation practice must be constructed, operated, developed, and maintained within the district.

(3) A conservation practice is the construction, operation, development, or maintenance of an erosion control and prevention operation, a work of improvement for flood prevention, and the conservation, development, use, and disposal of water within a district in furtherance of the purposes and policies of this chapter. Conservation practices include those practices pertaining to acceptable land use conversion as determined by a majority of the district supervisors with the advice of the United States natural resources conservation service.

History: En. Sec. 11, Ch. 473, L. 1983; amd. Sec. 281, Ch. 42, L. 1997.

76-15-542. Conservation practice loan account. (1) The supervisors of a district may allocate a portion of the regular assessment for each fiscal year to a segregated and separate conservation practice loan account within the treasury of the principal county for the purpose of providing funds for conservation practice loans.

(2) Conservation practice loan repayments, including principal, interest, if any, and administrative fees or charges for loans must be deposited in the conservation practice loan account. Interest earned from deposits or investment of funds must be credited to the conservation practice loan account unless the district directs the county treasurer to deposit the interest earned into the conservation district general operating account.

(3) The funds in the conservation practice loan account may be used for conservation practice loans and for the administrative expenses of a conservation practice loan program. Interest paid and collected on the deposits or investments of a conservation practice loan account may be used for the general operations of a conservation district.

History: En. Sec. 12, Ch. 473, L. 1983; amd. Sec. 2, Ch. 141, L. 1997.

76-15-543. Application for loan. (1) An application for a loan must be in the form prescribed by the district supervisors and contain or be accompanied by any information necessary to adequately describe the proposed conservation practice and necessary for evaluation of the proposed conservation practice under the criteria contained in 76-15-544 and 76-15-545.

(2) The application must include a conservation plan, which may be prepared in consultation with the United States natural resources conservation service.

History: En. Sec. 13, Ch. 473, L. 1983; amd. Sec. 282, Ch. 42, L. 1997.

76-15-544. Eligibility for loan. A district may award a loan to a land occupier to finance a conservation practice only if a majority of the district supervisors find, based on the application and the supervisors' investigation and evaluation of the proposal, that:

(1) the conservation practice will be economically feasible;

(2) the conservation practice will comply with statutory and regulatory standards protecting the quality of resources such as air, water, land, fish, wildlife, and recreational opportunities;

(3) the applicant has adequate financial resources to construct, operate, develop, and maintain the conservation practice; and

(4) the applicant is credit-worthy and is able and willing to enter into a contract with the district for loan repayment and for construction, operation, development, and maintenance of the proposed conservation practice.

History: En. Sec. 14, Ch. 473, L. 1983.

76-15-545. Criteria for evaluation of loan applicants — preferences. (1) The district supervisors shall apply the following criteria in ranking applications for a conservation practice loan that is eligible for funding under 76-15-544:

(a) the extent and desirability of the conservation need and resource benefit as determined in the district's annual and long-range plans;

(b) the feasibility and practicality of the project;

(c) the number of related resources that will benefit, including but not limited to water quality, wildlife habitat, and recreation;

(d) the extent and desirability of associated public benefits in addition to any private benefits the project or activity may provide; and

(e) any other factor that, in the district supervisors' judgment, is important to the evaluation of the conservation practice in light of the purposes, policies, and objectives of this chapter.

(2) Among applications for a loan in which the proposed conservation practices are substantially equal in ranking under subsection (1), a district shall give preference to:

(a) applicants who have not previously received a conservation practice loan; and

(b) applications for a group or cooperative conservation practice.

History: En. Sec. 15, Ch. 473, L. 1983.

76-15-546. Terms and conditions of loan. A conservation practice loan is subject to the following terms and conditions:

(1) The district shall obtain a security interest in real estate that would be obtained by a reasonable, careful, and prudent lender.

(2) The term of the loan may not be greater than the life of the project and may not exceed 30 years.

(3) A current appraisal of real estate offered as security and a commitment for title insurance on that land must be secured by the borrower at the borrower's expense. All costs incident to the loan and loan closing must be paid by the borrower.

(4) A conservation practice must be completed according to United States natural resources conservation service standards and specifications, if applicable.

History: En. Sec. 16, Ch. 473, L. 1983; amd. Sec. 283, Ch. 42, L. 1997; amd. Sec. 3, Ch. 141, L. 1997.

76-15-547. Rules for loan program. The district shall adopt rules:

(1) prescribing the form and content of applications for loans and plans for the resource conservation practice;

(2) governing the application of the criteria and preferences for awarding loans;

(3) providing for the servicing of loans, including arrangements for obtaining security interests and the establishment of reasonable fees or charges;

(4) providing for the confidentiality of financial statements submitted;

(5) prescribing the conditions for making loans;

(6) establishing the interest rate, if any, for the loans; and

(7) determining the type and amount of security interest in real estate that will be accepted and any conditions to be made upon the security interest.

History: En. Sec. 17, Ch. 473, L. 1983; amd. Sec. 4, Ch. 141, L. 1997.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Part 6
Project Areas

76-15-601. Establishment of project areas — special assessments. Whenever the public interest or convenience may require and upon the petition of a county, city, town, cooperative grazing association, or other special purpose district or by more than 50% of the qualified electors affected thereby, the board of supervisors is hereby authorized and empowered to establish project areas for carrying out projects to accomplish one or more of the purposes of the district and within which area special assessments can be made for carrying out project purposes.

History: En. Sec. 16, Ch. 291, L. 1969; amd. Sec. 20, Ch. 431, L. 1971; R.C.M. 1947, 76-224.

76-15-602. Hearing on petition to establish project area. Upon receipt of a petition to establish a project area, the board or boards of supervisors shall cause due notice to be given of a public hearing on the petition.

History: En. Sec. 17, Ch. 291, L. 1969; amd. Sec. 21, Ch. 431, L. 1971; R.C.M. 1947, 76-225(part).

76-15-603. Investigation of need for project area. Prior to the hearing, the board or boards of supervisors shall make or cause to be made an investigation of the need for establishment of the proposed project area and shall prepare a report of their findings.

History: En. Sec. 17, Ch. 291, L. 1969; amd. Sec. 21, Ch. 431, L. 1971; R.C.M. 1947, 76-225(part).

76-15-604. Protest procedure. At any time within 15 days after the date of the last publication of the notice of the hearing on the petition, any owner of property liable to be assessed for the project may protest against the proposed project or the creation of the project area, or both. The protest must be in writing and be delivered to the secretary of the conservation district who shall endorse on the protest the date of its receipt by the secretary.

History: En. Sec. 18, Ch. 291, L. 1969; amd. Sec. 22, Ch. 431, L. 1971; R.C.M. 1947, 76-226(part); amd. Sec. 2530, Ch. 56, L. 2009.

76-15-605. Board decision. (1) The report of 76-15-603 must be presented and read at the hearing on the petition.

(2) At the public hearing on the petition, the board of supervisors shall proceed to hear and pass upon all protests made and its decision must be final and conclusive except when owners of more than 50% of the land in the proposed project area protest the project. If owners of more than 50% of the land protest the project, no further action may be taken for a period of 6 months from the date of the hearing, after which a new petition may be filed.

(3) If the board or boards of supervisors find that it is not feasible, desirable, or practical to establish the proposed project area, they shall make an order denying the petition and shall state therein their reasons for so doing.

(4) If, however, the board finds that the project is desirable, proper, and necessary, it shall grant the petition, establish the boundaries of the proposed project area, and notify the county election administrator that an election is to be held in the proposed area for the purpose of determining whether or not the project area must be created. The election must be conducted in accordance with Title 13, chapter 1, part 5.

History: En. Secs. 17, 18, Ch. 291, L. 1969; amd. Secs. 21, 22, Ch. 431, L. 1971; R.C.M. 1947, 76-225(part), 76-226(part); amd. Sec. 395, Ch. 571, L. 1979; amd. Sec. 245, Ch. 49, L. 2015.

76-15-606. Election procedure. (1) The question must be submitted to the electors by ballot on which the words "For creation of proposed project area" and "Against creation of proposed project area" must appear, with a square before each proposition and directions to insert an "X" mark in the square before one or the other of the propositions as the voter may favor or oppose creation of the project area.

(2) A person is not entitled to vote at the election unless the person possesses all the qualifications required of electors under Title 13 and resides within the boundaries of the proposed project area and the county in which the person proposes to vote.

History: En. Sec. 17, Ch. 291, L. 1969; amd. Sec. 21, Ch. 431, L. 1971; R.C.M. 1947, 76-225(part); amd. Sec. 2531, Ch. 56, L. 2009.

76-15-607. Notice of creation of project area. If the majority of the votes cast at the election are in favor of creating a project area, the board or boards of supervisors shall create the project area and shall file with the county clerk and recorder in each county in which there lies a portion of the project area a notice of creation of the project area setting forth the purposes of the area and the boundaries thereof.

History: En. Sec. 17, Ch. 291, L. 1969; amd. Sec. 21, Ch. 431, L. 1971; R.C.M. 1947, 76-225(part).

76-15-608. Description of work or project area. In all resolutions, notices, orders, and determinations, it shall be sufficient to briefly describe the work or the project area or both.

History: En. Sec. 19, Ch. 291, L. 1969; R.C.M. 1947, 76-227.

76-15-609. Area included in project area. A project area may include a part or all of any district or may include areas in more than one district.

History: En. Sec. 20, Ch. 291, L. 1969; R.C.M. 1947, 76-228(part).

76-15-610. Administration of project area. The affairs of a project area shall be administered by the board or boards of supervisors or their authorized agents.

History: En. Sec. 20, Ch. 291, L. 1969; R.C.M. 1947, 76-228(part).

76-15-611. Federal authority unaffected. (1) The provisions of this part do not apply to the government of the United States or any department, bureau, or agency thereof, except to such extent as the government of the United States or any department, bureau, or agency thereof may desire to take advantage of its provisions. It is an express purpose and intent of this part to aid but not to interfere with the government of the United States or any department, bureau, or agency thereof in any undertaking over which such federal authority desires to exercise full supervision and control.

(2) The provisions of this part may not be construed to impair, limit, or repeal any right whatsoever which the government of the United States or any department, bureau, or agency thereof has to full and complete jurisdiction, management, or control over projects over which such federal authority desires to exercise such rights. It is a purpose of this part expressly to subordinate any power of jurisdiction and to never interfere directly with such federal authority.

History: En. Sec. 22, Ch. 291, L. 1969; R.C.M. 1947, 76-230; amd. Sec. 20, Ch. 266, L. 1979.

76-15-612. Duty to maintain improvements. Whenever any project petitioned for or created by the state or federal government has been made, built, constructed, erected, or accomplished as provided in this part, it is hereby made the duty of the board or boards of supervisors under whose jurisdiction the project area was created to adequately and suitably maintain and preserve said improvements and fully to keep the same in proper repair and operation by contract or otherwise in the way or manner as the board shall deem suitable and proper.

History: En. Sec. 25, Ch. 291, L. 1969; R.C.M. 1947, 76-233.

76-15-613 through 76-15-620 reserved.

76-15-621. Estimate of expenses of project area. (1) When a project area has been created, the board or boards of supervisors shall estimate the expenses of the project area from the date of its establishment until the end of the ensuing fiscal year and before July 1 in each year thereafter shall estimate project area expenses for the fiscal year ensuing.

(2) Estimates of project area expenses may include revenue needed to pay the interest or principal of any bonded debt, costs of rights-of-way, easements, or other interest in property deemed necessary for the construction, operation, and maintenance of any projects therein.

History: En. Sec. 21, Ch. 291, L. 1969; R.C.M. 1947, 76-229(part).

76-15-622. Financing of project area expenses. (1) The expense of the project area may, in the discretion of the board or boards of supervisors, be financed in whole from revenue received by regular assessments or by revenue received in part from regular assessments and in part from special assessments.

(2) Upon adoption of a budget covering necessary expenses, the board or boards of supervisors shall send a copy of such budget or apportionment thereof to the board of county commissioners of each county in the project area and the city auditor of each city in the project area.

History: En. Sec. 21, Ch. 291, L. 1969; R.C.M. 1947, 76-229(part).

76-15-623. Administration of special assessment. (1) Subject to 15-10-420, when the board or boards of supervisors have determined that a special assessment is necessary, the board of county commissioners of the county in which there lies any portion of a project area may annually at the time of levying county taxes levy a special assessment on the taxable value of all taxable property in the project area. The levy must be known as the ".... (name of district) soil and water conservation district special assessment" and must be sufficient to raise the income reported to it in the estimate of the supervisors.

(2) Each lot or parcel of land to be assessed must be assessed with that part of the amount of money required that its taxable value bears to the total taxable value of all the lands to be assessed.

History: En. Sec. 21, Ch. 291, L. 1969; R.C.M. 1947, 76-229(part); amd. Sec. 149, Ch. 584, L. 1999; amd. Sec. 199, Ch. 574, L. 2001.

76-15-624. Disposition of funds — insufficient revenue. (1) Funds produced each year by this special tax levy shall be available until spent.

(2) If this special tax levy in any year does not produce sufficient revenue to pay the project area expenses, a fund sufficient to pay the same may be accumulated.

History: En. Sec. 21, Ch. 291, L. 1969; R.C.M. 1947, 76-229(part).

76-15-625. Limitation on special assessment. A special assessment to defray the expenses of a project area may be spread over a term of not to exceed 40 years.

History: En. Sec. 21, Ch. 291, L. 1969; R.C.M. 1947, 76-229(part).

Part 7
Land Use Regulations

76-15-701. Adoption of land use regulations. (1) The supervisors of any district shall have authority to formulate regulations governing the use of lands within the district in the interest of conserving soil and water resources and preventing and controlling erosion. The supervisors may conduct such public meetings and public hearings upon tentative regulations as may be necessary to assist them in this work.

(2) The supervisors shall not have authority to enact such land use regulations into law until after they shall have caused due notice to be given of their intention to order a referendum for submission of such regulations to the qualified electors within the boundaries of the district for their indication of approval or disapproval of such proposed regulations and until after the supervisors have considered the result of such referendum.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(A); amd. Sec. 396, Ch. 571, L. 1979.

Cross-References

Cooperation with state agencies, 76-15-317.

76-15-702. Referendum on proposed land use regulations. (1) The proposed regulations shall be embodied in a proposed ordinance. Copies of such proposed ordinance shall be available for the inspection of all eligible voters during the period between publication of such notice and the date of the referendum.

(2) The notices of the referendum shall recite the contents of such proposed ordinance or shall state where copies of such proposed ordinance may be examined. The question shall be submitted by ballots upon which the words "For approval of proposed ordinance No. ...., prescribing land use regulations for conservation of soil and prevention of erosion" and "Against approval of proposed ordinance No. ...., prescribing land use regulations for conservation of soil and prevention of erosion" shall appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of said propositions as the voter may favor or oppose approval of such proposed ordinance.

(3) The supervisors shall publish the result of the referendum. All registered electors within the district shall be eligible to vote in such referendum. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(B); amd. Sec. 397, Ch. 571, L. 1979.

76-15-703. Voter approval of proposed regulations required. The supervisors shall not have authority to enact such proposed ordinance into law unless a majority of the votes cast in such referendum shall have been cast for approval of the proposed ordinance. The approval of the proposed ordinance by a majority of the votes cast in such referendum shall not be deemed to require the supervisors to enact such proposed ordinance into law.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(part).

76-15-704. Regulations to have force of law. Land use regulations prescribed in ordinances adopted pursuant to the provisions of 76-15-701 through 76-15-707 by the supervisors of any district shall have the force and effect of law in the district and shall be binding and obligatory upon all occupiers of lands within such district.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(part).

76-15-705. Alteration of regulations. (1) Any qualified elector within such district may at any time file a petition with the supervisors asking that any or all of the land use regulations prescribed in any ordinance adopted by the supervisors under the provisions of 76-15-701 through 76-15-707 be amended, supplemented, or repealed.

(2) Land use regulations prescribed in any ordinance adopted pursuant to the provisions of 76-15-701 through 76-15-707 shall not be amended, supplemented, or repealed except in accordance with the procedure prescribed in 76-15-701 through 76-15-707 for adoption of land use regulations.

(3) Referenda on adoption, amendment, supplementation, or repeal of land use regulations shall not be held more often than once in 6 months.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(part).

76-15-706. Contents of land use regulations. (1) The regulations to be adopted by the supervisors under the provisions of 76-15-701 through 76-15-707 may include:

(a) provisions requiring the carrying out of necessary engineering operations, including the construction of water spreaders, terraces, terrace outlets, check dams, dikes, ponds, ditches, fences, and other necessary structures;

(b) provisions requiring observance of particular methods of cultivation or grazing, including contour cultivating, contour furrowing, and lister furrowing; sowing, planting, and strip cropping; seeding and planting of lands with water-conserving and erosion-preventing plants, trees, and grasses; and forestation and reforestation;

(c) specifications of cropping and range programs and tillage and grazing practices to be observed;

(d) provisions requiring the retirement from cultivation of highly erosive areas or of areas on which erosion may not be adequately controlled if cultivation is carried on; and

(e) provisions for other means, measures, operations, and programs that may assist conservation of soil and water resources and prevent or control erosion in the district, having due regard to the legislative findings set forth in 76-15-101 and 76-15-102.

(2) The regulations must provide for the establishment of a board of adjustment pursuant to 76-15-721.

(3) The regulations must be uniform throughout the territory comprised within the district except that the supervisors may classify the lands within the district with reference to such factors as soil type, degree of slope, degree of threatened or existing erosion, grazing and cropping programs, tillage and range practices in use, and other relevant factors and may provide regulations varying with the type or class of land affected but uniform as to all lands within each class or type.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(part); amd. Sec. 1, Ch. 194, L. 2015.

76-15-707. Publication of regulations. Copies of land use regulations adopted under the provisions of 76-15-701 through 76-15-707 shall be printed and made available to all occupiers of land within the district.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971; R.C.M. 1947, 76-109(part).

76-15-708. Power to determine compliance with regulations. After a complaint shall have been filed with the supervisors charging a violation of the regulations, the supervisors

shall have authority to go upon any lands within the district to determine whether land use regulations adopted under the provisions of 76-15-701 through 76-15-707 are being observed.

History: En. Sec. 10, Ch. 72, L. 1939; amd. Sec. 9, Ch. 431, L. 1971; R.C.M. 1947, 76-110(1).

76-15-709. Enforcement of regulations — petition to district court. Where the supervisors of any district shall find that any of the provisions of land use regulations prescribed in any ordinance adopted in accordance with the provisions of 76-15-701 through 76-15-707 are not being observed on particular lands and that such nonobservance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district, the supervisors may present a petition, duly verified, to the district court of the county in which the lands of the defendant may lie:

(1) setting forth:

(a) the adoption of the ordinance prescribing land use regulations;

(b) the failure of the defendant to observe such regulations and to perform particular work, operations, or avoidances as required thereby; and

(c) that such nonobservance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district; and

(2) praying the court:

(a) to require the defendant to perform the work, operations, or avoidances within a reasonable time; and

(b) to order that, if the defendant shall fail so to perform, the supervisors may go on the land, perform the work or other operations, or otherwise bring the condition of such lands into conformity with the requirements of such regulations and recover the costs and expenses thereof, with interest, from the defendant.

History: En. Sec. 10, Ch. 72, L. 1939; amd. Sec. 9, Ch. 431, L. 1971; R.C.M. 1947, 76-110(2).

76-15-710. Court procedure after petition is filed. (1) Upon the presentation of a petition as described in 76-15-709, the court shall cause process to be issued against the defendant and shall hear the case. If it appears to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take evidence that it may direct and report the evidence to the court with the referee's findings of fact and conclusions of law, which must constitute a part of the proceedings upon which the determination of the court is made.

(2) In all cases in which the person in possession of lands who fails to perform work, operations, or avoidances is not the owner, the owner of the lands must be joined as party defendant.

(3) The court may dismiss the petition, or it may require the defendant to perform the work, operations, or avoidances and may provide that, upon the failure of the defendant to initiate the performance within the time specified in the order of the court and to prosecute the performance to completion with reasonable diligence, the supervisors may enter upon the lands involved and perform the work or operations or otherwise bring the condition of the land into conformity with the requirements of the regulations and recover the costs and expenses of the work or operations, with interest at the rate of 10% a year, from the defendant.

(4) The court shall retain jurisdiction of the case until after the work has been completed. Upon completion of the work pursuant to the order of the court, the supervisors may file a petition with the court, a copy of which must be served upon the defendant in the case, stating the costs and expenses sustained by them in the performance of the work and asking judgment for the costs and expenses with interest. The court has jurisdiction to enter judgment for the amount of the costs and expenses, with interest at the rate of 10% a year until paid, together with the costs of suit, including reasonable attorney fees to be fixed by the court.

History: En. Sec. 10, Ch. 72, L. 1939; amd. Sec. 9, Ch. 431, L. 1971; R.C.M. 1947, 76-110(3) thru (5); amd. Sec. 6, Ch. 76, L. 1985; amd. Sec. 2532, Ch. 56, L. 2009.

76-15-711 through 76-15-720 reserved.

76-15-721. Board of adjustment. (1) A board of adjustment consisting of three members must be appointed to decide a petition for variance pursuant to 76-15-723.

(2) (a) (i) On filing of a petition pursuant to 76-15-723, the department shall appoint members to the board of adjustment, subject to the approval of the district supervisors.

(ii) After a board is appointed pursuant to subsection (2)(a)(i), that board serves until it reaches a final decision on the petition.

(b) The members may be removed by the department, on notice and hearing, only for neglect of duty or malfeasance in office. The hearing must be conducted jointly by the department and the supervisors of the district.

(c) Employees of the department and the supervisors of the district are ineligible to appointment as members of the board of adjustment.

(3) Vacancies in the board of adjustment must be filled in the same manner as original appointments.

(4) The members of the board of adjustment receive compensation for their services at the rate of $25 a day for time spent on the work of the board in addition to expenses, including travel expenses, as provided for in 2-18-501 through 2-18-503, necessarily incurred in the discharge of their duties. The supervisors shall pay the necessary administrative and other expenses of operation incurred by the board upon the certificate of the presiding officer of the board.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(1); amd. Sec. 7, Ch. 76, L. 1985; amd. Sec. 289, Ch. 418, L. 1995; amd. Sec. 2, Ch. 194, L. 2015.

76-15-722. Operation of board of adjustment. (1) The board of adjustment shall adopt rules to govern its procedures. The rules must be in accordance with this chapter and with the ordinance establishing the board of adjustment.

(2) The board shall elect a presiding officer from among its members. Meetings of the board must be held at the call of the presiding officer and at other times that the board may determine. Any two members of the board constitute a quorum. The presiding officer or in the presiding officer's absence another member of the board that the presiding officer may designate to serve as acting presiding officer may administer oaths and compel the attendance of witnesses.

(3) All meetings of the board must be open to the public. The board shall keep a full and accurate record of all proceedings, of all documents filed with it, and of all orders entered, which must be filed in the office of the board and are a public record.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(2); amd. Sec. 21, Ch. 266, L. 1979; amd. Sec. 2533, Ch. 56, L. 2009; amd. Sec. 3, Ch. 194, L. 2015.

76-15-723. Petition for variance. (1) A qualified elector may file a petition with the board of adjustment alleging that there are great practical difficulties or unnecessary hardship in the way of the elector carrying out upon the elector's lands the strict letter of the land use regulations prescribed by ordinance approved by the supervisors and asking the board to authorize a variance from the terms of the land use regulations in the application of the regulations to the lands occupied by the petitioner.

(2) Copies of the petition must be served by the petitioner upon the presiding officer of the supervisors of the district within which the petitioner's lands are located and upon the department.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(part); amd. Sec. 2534, Ch. 56, L. 2009.

76-15-724. Hearing on petition for a variance. (1) The board of adjustment shall fix a time for the hearing of the petition and cause due notice of the hearing to be given.

(2) The supervisors of the district and the department are entitled to appear and be heard at the hearing. A qualified elector within the district who objects to the authorizing of the variance prayed for may intervene and become a party to the proceedings. A party to the hearing before the board may appear in person, by agent, or by attorney.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(part).

76-15-725. Board decision. (1) If, upon the facts presented at the hearing, the board of adjustment determines that there are great practical difficulties or unnecessary hardship in the way of applying the strict letter of any of the land use regulations upon the lands of the petitioner, it shall make and record that determination and shall make and record findings of fact as to the specific conditions which establish the great practical difficulties or unnecessary hardship.

(2) Upon the basis of the findings and determination, the board of adjustment may order a variance from the terms of the land use regulations in their application to the lands of the petitioner that:

(a) will relieve the great practical difficulties or unnecessary hardship;

(b) will not be contrary to the public interest; and

(c) will be such that the spirit of the land use regulations is observed, the public health, safety, and welfare is secured, and substantial justice is done.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(part); amd. Sec. 22, Ch. 266, L. 1979; amd. Sec. 290, Ch. 418, L. 1995.

76-15-726. Appeal to district court from board decision. (1) A petitioner aggrieved by an order of the board of adjustment granting or denying, in whole or in part, the relief sought, the supervisors of the district, or an intervening party may obtain a review of the order in any district court of the county in which the lands of the petitioner lie by filing in the court a petition praying that the order of the board of adjustment be modified or set aside.

(2) A copy of the petition must immediately be served upon the parties to the hearing before the board of adjustment, and after service the party seeking review shall file in the court a transcript of the entire record in the proceedings, certified by the board of adjustment, including the documents and testimony upon which the order complained of was entered and the findings, determination, and order of the board of adjustment.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(part); amd. Sec. 291, Ch. 418, L. 1995.

76-15-727. Court proceedings. (1) Upon the filing, the court shall cause notice of the filing to be served upon the parties, and the court has jurisdiction of the proceedings and of the questions determined or to be determined in the proceedings, may grant temporary relief as it considers just and proper, and make and enter a decree enforcing, modifying and enforcing as modified, or setting aside, in whole or in part, the order of the board of adjustment.

(2) A contention that is not urged before the board of adjustment may not be considered by the court unless the failure or neglect to urge the contention is excused because of extraordinary circumstances. The findings of the board of adjustment as to the facts, if supported by evidence, are conclusive.

(3) If a party applies to the court for leave to produce additional evidence and shows to the satisfaction of the court that the evidence is material and that there are reasonable grounds for the failure to produce the evidence in the hearing before the board of adjustment, the court may order the additional evidence to be taken before the board of adjustment and to be made a part of the transcript. The board of adjustment may modify its findings as to the facts or make new findings, taking into consideration the additional evidence taken and filed, and it shall file the modified or new findings which, if supported by evidence, are conclusive and shall file with the court its recommendations, if any, for the modification or setting aside of its original order.

(4) The jurisdiction of the court is exclusive and its judgment and decree are final, except that they are subject to review in the same manner as are other judgments or decrees of the court.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975; R.C.M. 1947, 76-111(part); amd. Sec. 292, Ch. 418, L. 1995.

Part 8
Alteration and Termination of Conservation Districts

76-15-801. Change of district name. Petitions for changing the name of a district organized under this chapter may be filed with the department. The petition shall be signed by a majority of the district supervisors and shall state the present name of the district and the proposed new name. If the department determines that the proposed new name is not identical with or so similar to that of any other district in the state as to lead to confusion or uncertainty, it shall present a statement of that determination to the secretary of state, who shall issue to the district a certificate, under the seal of the state, evidencing the change of name of the district.

Upon the issuance of the certificate, the supervisors of the district shall cause due notice to be given of the change of the name of the district.

History: En. 76-117 by Sec. 1, Ch. 46, L. 1951; amd. Sec. 1, Ch. 41, L. 1959; amd. Sec. 13, Ch. 431, L. 1971; amd. Sec. 96, Ch. 253, L. 1974; R.C.M. 1947, 76-117(1).

76-15-802. Procedure to add territory to a district. Petitions for including additional territory within an existing district may be filed with the department, and the proceedings provided for in part 2 in the case of petitions to organize a district shall be followed in the case of petitions for the inclusion. The department shall prescribe the form for the petitions, which shall be as nearly as may be in the form prescribed in part 2 for petitions to organize a district. Where the total number of qualified electors in the area proposed for inclusion is less than 10, the petition may be filed when signed by a majority of the qualified electors of the area, and in that case no referendum need be held. In referenda upon petitions for the inclusion, all qualified electors within the proposed additional area are eligible to vote.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977; R.C.M. 1947, 76-105(10).

76-15-803. Combination or division of districts. (1) A petition may be filed with the department for the division of any district, for the combination of any two or more districts, or for the division of a district and the combination of any divided part of a district with any other district. Any or all of these actions may be initiated by the filing of a single petition with the department. The petition must be signed by a majority of the members of each of the governing bodies of the affected districts. The department shall prescribe the form for the petition. When a petition is filed, the department shall within 30 days give notice of a public hearing on the petition. All qualified electors within the affected districts and all other interested parties are entitled to attend the hearing and be heard. After the hearing, the department shall determine from the hearing record whether the proposed division, the combination, or the division and combination of territory is administratively practicable and feasible. In making the determination, the department shall give due regard to the legislative determinations set forth in 76-15-101 and 76-15-102 and to the considerations enumerated in 76-15-201 through 76-15-216, to the extent applicable, relative to determining the practicability and feasibility of creating a district.

(2) If the department determines that the proposed division, combination, or division and combination is administratively practicable and feasible, the department shall effect the proposed division, combination, or division and combination by filing with the secretary of state a statement certifying the changes made in the boundaries of the affected districts, together with any change in the name of the districts. If the determination is in the negative, the department shall make and record that determination and shall deny the petition. After 6 months from the denial of the petition, a new petition may be filed.

(3) When a district is divided, the supervisors of the district shall allocate the property, rights, and liabilities (including contractual obligations) of the district among the resulting parts of the district, giving due consideration to the proportionate size of each divided part, the number of qualified electors and operating units, the degree and extent of soil erosion in the district, and other relevant factors. A statement of the allocation must be filed with the department within 30 days after the notification of the board's determination in favor of the division of the district. If the supervisors fail to make or to agree upon the allocation, the division must be made by the department after a hearing as the department considers necessary and with due regard for the standards set out in this subsection for making the allocations.

History: En. 76-117 by Sec. 1, Ch. 46, L. 1951; amd. Sec. 1, Ch. 41, L. 1959; amd. Sec. 13, Ch. 431, L. 1971; amd. Sec. 96, Ch. 253, L. 1974; R.C.M. 1947, 76-117(2) thru (4); amd. Sec. 293, Ch. 418, L. 1995.

76-15-804. Petition to discontinue all or part of district. (1) At any time after 5 years after the organization of a district under this chapter, 10% or more of the qualified electors within the boundaries of the district may file a petition with the department requesting the termination of the operations of the district or a part of the district and the discontinuance of the existence of the district or that part of the district.

(2) The department may conduct public meetings and public hearings upon the petition that are necessary to assist it in the consideration of the petition.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(1); amd. Sec. 10, Ch. 473, L. 1983; amd. Sec. 294, Ch. 418, L. 1995.

76-15-805. Referendum on question of discontinuance. (1) Within 60 days after the petition has been received by the department, it shall give due notice of the holding of a referendum and shall supervise the referendum and issue appropriate regulations governing the conduct thereof. The question is to be submitted by ballots upon which the words "For terminating the existence of the .... (name of the conservation district or part of the district to be here inserted)" and "Against terminating the existence of the .... (name of the conservation district or part of the district to be here inserted)" shall appear with the square before each proposition and a direction to insert an "X" mark in the square before one or the other of the propositions as the voter may favor or oppose discontinuance of the district or a part of the district.

(2) All qualified electors within the boundaries of the district are eligible to vote in the referendum. No informalities in the conduct of the referendum or in any matters relative thereto shall invalidate the referendum or the result thereof if notice thereof is given substantially as herein provided and the referendum is fairly conducted.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(2).

76-15-806. Decision in case of petition for discontinuance of entire district. (1) In the case of petitions for discontinuance of a district, the department shall publish the result of the referendum and shall consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible.

(2) If the department determines that the continued operation of the district is administratively practicable and feasible, it shall record that determination and deny the petition.

(3) If the department determines that the continued operation of the district is not administratively practicable and feasible, it shall record that determination and shall certify the determination to the supervisors of the district.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(3)(a); amd. Sec. 295, Ch. 418, L. 1995.

76-15-807. Decision in case of petition for discontinuance of portion of district. (1) In the case of petitions for discontinuance of part of a district, the department shall publish the result of the referendum and shall consider and determine whether the continued operation of a part of the district within the defined boundaries is administratively practicable and feasible.

(2) If the department determines that the continued operation of the district is not administratively practicable and feasible with a part of the district discontinued, it shall record that determination and deny the petition.

(3) If the department determines that the continued operation of the district is administratively practicable and feasible with a part of the district discontinued, it shall record that determination and shall certify the determination to the supervisors of the district.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(3)(b); amd. Sec. 296, Ch. 418, L. 1995.

76-15-808. Criteria for decision on discontinuance. (1) In making the determination, the department shall give due regard and weight to the attitudes of the qualified electors lying within the district, the number of qualified electors eligible to vote in the referendum who voted, the proportion of the votes cast in the referendum in favor of the discontinuance of the district or part of the district to the total number of votes cast, the approximate wealth and income of the qualified electors of the district, the probable expense of carrying on erosion control operations within the district, and such other economic and social factors as may be relevant to the determination, having due regard to the legislative findings set forth in 76-15-101 and 76-15-102.

(2) The department may not determine that the continued operation of the district or part of the district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum are cast in favor of the continuance of the district or part of the district.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(4); amd. Sec. 297, Ch. 418, L. 1995.

76-15-809. Procedure to terminate district. (1) Upon certification of the department that the department has determined that the continued operation of the district or part of the district is not administratively practicable and feasible, pursuant to 76-15-804 through 76-15-810, the supervisors shall immediately proceed to terminate the affairs of the district or part of the district.

(2) The supervisors shall dispose of all property belonging to the district or part of the district at public auction and shall pay the proceeds of the sale into the state treasury.

(3) The supervisors shall file an application, duly verified, with the secretary of state for the discontinuance of the district or part of the district and shall transmit with the application the certificate of the department, setting forth the determination of the department that the continued operation of the district or part of the district is not administratively practicable and feasible. The application must state that the property of the district or part of the district has been disposed of and the proceeds paid to the treasury as provided in 76-15-804 through 76-15-810 and must set forth a full accounting of the properties and proceeds of the sale.

(4) The secretary of state shall issue to the supervisors a certificate of dissolution and shall record the certificate in an appropriate book of record in the secretary of state's office.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(5); amd. Sec. 298, Ch. 418, L. 1995.

76-15-810. Effect of termination. (1) Upon issuance of a certificate of dissolution under 76-15-809, all ordinances and regulations theretofore adopted and in force within the district or in that part of the district are void.

(2) All contracts previously entered into, to which the district or supervisors are parties, remain in effect for the period provided in those contracts. The department shall be substituted for the district or supervisors as party to the contracts if the total district is discontinued. In this case the department is entitled to all benefits and subject to all liabilities under the contracts and has the same right and liability to perform, to require performance, to sue and be sued thereon, and to modify or terminate the contracts by mutual consent or otherwise as the supervisors of the district would have had.

(3) The dissolution does not affect the lien of any judgment entered under 76-15-708 through 76-15-710 or the pendency of an action instituted under those sections, and the department succeeds to all rights and obligations of the district or supervisors as to those liens and actions.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977; R.C.M. 1947, 76-114(6).

Part 9
Coal Bed Methane Protection

76-15-901. Short title. This part may be cited as the "Coal Bed Methane Protection Act".

History: En. Sec. 1, Ch. 531, L. 2001.

76-15-902. Legislative findings and declaration of purpose. (1) The legislature finds that the need for an economical supply of clean-burning energy is a national and state priority.

(2) The legislature further finds that Montana possesses plentiful reserves of clean-burning natural gas contained in coal beds.

(3) The legislature further finds that the extraction of natural gas from coal beds may result in unanticipated adverse impacts to land and to water quality and availability.

(4) The legislature declares that there is a compelling public need to promote efforts that preserve the environment and protect the right to use and enjoy private property. The legislature further declares that the purpose of this part is to establish a long-term coal bed methane protection account and a coal bed methane protection program for the purpose of compensating private landowners and water right holders for damage to land and to water quality and availability that is attributable to the development of coal bed methane wells.

(5) The legislature further declares that the provisions of this part do not relieve coal bed methane developers or operators that own, develop, or operate coal bed methane wells and collection systems of their legal obligation to compensate landowners and water right holders for damages caused by the development of coal bed methane.

(6) The legislature further declares that the provisions of this part do not relieve coal bed methane developers or operators from:

(a) any liability associated with the exploration or development of coal bed methane; or

(b) the responsibility to comply with any applicable provision of Titles 75, 82, and 85 and any other provision of law applicable to the protection of natural resources or the environment.

History: En. Sec. 2, Ch. 531, L. 2001.

76-15-903. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agricultural production" means the production of:

(a) any growing grass, crops, or trees attached to the surface of the land; or

(b) farm animals with commercial value.

(2) "Coal bed methane developer or operator" means the person who acquires a lease for the purpose of extracting natural gas from a coal bed.

(3) "Department" means the department of natural resources and conservation as provided for in Title 2, chapter 15, part 33.

(4) "Emergency" means the loss of a water supply that must be replaced immediately to avoid substantial damage to a landowner or a water right holder.

History: En. Sec. 3, Ch. 531, L. 2001.

76-15-904. Coal bed methane protection account — use. (1) There is a coal bed methane protection account in the state special revenue fund.

(2) All money paid into the account must be invested by the board of investments. Earnings from investments must be deposited in the account.

(3) Subject to the conditions of subsections (4) and (5), money deposited in the account must be used to compensate landowners and water right holders for damages attributable to coal bed methane development as provided in this part.

(4) Money deposited in the fund and earnings of the fund may not be expended until after June 30, 2005. For fiscal years beginning after June 30, 2005, principal and earnings may be expended only in the case of an emergency. For fiscal years beginning after June 30, 2011, principal and earnings in the account may be expended for any purpose authorized pursuant to this part.

(5) Subject to legislative fund transfers, money in the account must be appropriated to the department for use by conservation districts that have private landowners or water right holders who qualify for compensation as provided in 76-15-905.

History: En. Sec. 4, Ch. 531, L. 2001; amd. Sec. 12, Ch. 522, L. 2003; amd. Sec. 11, Ch. 312, L. 2011.

76-15-905. Coal bed methane protection program — restrictions. (1) There is a coal bed methane protection program administered by conservation districts that have coal beds within the exterior boundary of the district or whose water sources may be adversely affected by the extraction of coal bed methane. The purpose of the coal bed methane protection program is to compensate private landowners or water right holders for damage caused by coal bed methane development.

(2) A conservation district shall establish procedures, approved by the department, for evaluating claims for compensation submitted by a landowner or water right holder. The procedures must include:

(a) a method for submitting an application for compensation for damages caused by coal bed methane development;

(b) a process for determining the cost of the damage to land, surface water, or ground water, if any, caused by coal bed methane development;

(c) the development of eligibility requirements for receiving compensation that include an applicant's access to existing sources of state funding, including state-mandated payments, that compensate for damages; and

(d) criteria for ranking applications related to available resources.

(3) An eligible recipient for compensation includes private landowners and water right holders who can demonstrate as the result of damage caused by coal bed methane development:

(a) a loss of agricultural production or a loss in the value of land;

(b) a reduction in the quantity or quality of water available from a surface water or ground water source that affects the beneficial use of water; or

(c) the contamination of surface water or ground water that prevents its beneficial use.

(4) (a) Subject to the conditions of subsections (5) through (8), an eligible landowner may be compensated for the damages incurred by the landowner for loss of agricultural production and income, lost land value, and lost value of improvements caused by coal bed methane development. A payment made under this subsection (4)(a) may only cover land directly affected by coal bed methane development.

(b) Subject to the conditions of subsections (5) through (8), an eligible water right holder may be compensated for damages caused by the contamination, diminution, or interruption of surface water or ground water.

(5) In order to qualify for a payment of damages under this section, the landowner or water right holder shall demonstrate that it is unlikely that compensation will be made by the coal bed methane developer or operator who is liable for the damage to land or the reduction in or contamination of surface water or ground water as the result of coal bed methane development.

(6) Compensation made to a landowner or a water right holder under this section may not exceed 75% of the cost of the damages. The maximum amount paid to a landowner or water right holder may not exceed $50,000.

(7) Conservation district administrative expenses for services provided under this section are eligible costs for reimbursement from the coal bed methane protection account.

(8) (a) Except as provided in subsection (8)(b), compensation for damages allowed under this section may be made only after June 30, 2011.

(b) Compensation for an emergency may be made after June 30, 2005.

History: En. Sec. 5, Ch. 531, L. 2001.

Part 10
Procurement and Competitive Bidding

Part Cross-References

Public contracts, Title 18.

Contracts and other obligations, Title 28.

76-15-1001. Power to enter and execute contracts. A conservation district is authorized to make contracts necessary to implement the applicable powers granted by this chapter and to provide for the manner of executing contracts.

History: En. Sec. 1, Ch. 155, L. 2015.

76-15-1002. Restriction on use of funds. A conservation district shall comply with state procurement laws when expending state-funded grants and loans.

History: En. Sec. 1, Ch. 585, L. 2025.

Compiler's Comments

Effective Date: This section is effective October 1, 2025.

76-15-1003 reserved.

76-15-1004. Repealed. Sec. 7, Ch. 585, L. 2025.

History: En. Sec. 2, Ch. 155, L. 2015.

76-15-1005. Requirements for purchases or construction contracts. For contracts for the purchase of vehicles, machinery, equipment, materials, or supplies or for construction, repair, restoration, or maintenance under this chapter in excess of the limit provided in 7-5-2301, supervisors shall comply with the provisions of 76-15-1006 and award a contract according to the selection criteria for proposals and bidding as described in 18-4-303 and 18-4-304.

History: En. Sec. 3, Ch. 155, L. 2015; amd. Sec. 3, Ch. 585, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 585, L. 2025. Amendment effective October 1, 2025.

76-15-1006. Advertisements. (1) The advertisement for requests for bids, proposals, or qualifications must:

(a) set forth the evaluation criteria to be used; and

(b) be published in a newspaper of general circulation that includes the conservation district.

(2) A second publication may not be made less than 5 days or more than 12 days before the opening of bids.

(3) A second publication may not be made less than 5 days or more than 12 days before the deadline for the submission of a request for proposals or a request for qualifications.

History: En. Sec. 4, Ch. 155, L. 2015; amd. Sec. 4, Ch. 585, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 585, L. 2025. Amendment effective October 1, 2025.

76-15-1007 through 76-15-1010 reserved.

76-15-1011. Exemptions from advertising and bidding. (1) When immediate delivery of supplies, equipment, or services is required in an emergency, including but not limited to fire, flood, explosion, storm, earthquake, riot, or insurrection, the provisions of 76-15-1005 and 76-15-1006 do not apply if:

(a) the supervisors act, by majority vote in an open meeting, in a manner that best meets the emergency and serves the public interest; and

(b) the emergency is declared and recorded in the minutes of the board of supervisors meeting.

(2) Supplies or services may be purchased without bid from government agencies if purchased at a substantial savings.

(3) (a) Contracts for the purchase of vehicles, machinery, equipment, materials, or supplies or for construction, repair, restoration, or maintenance for which the cost is less than the limit provided in 7-5-2301 may be entered into by direct negotiation.

(b) A contract for architectural, engineering, and land surveying services may be entered into by direct negotiation subject to the limits of 18-8-212.

(c) For other contracts, if the total contract value is estimated to be:

(i) less than $10,000, a purchase technique may be used to meet conservation district needs;

(ii) more than $10,000 but not to exceed $100,000, a limited solicitation procedure may be used. This procedure requires a minimum of three viable written or oral quotations, if available, with an award based on the lowest responsible bid price that meets all criteria and specifications. A conservation district shall document the basis for an award under a limited solicitation procedure.

(iii) more than $100,000, a conservation district shall advertise for bids, proposals, or qualifications pursuant to 76-15-1006 and award a contract using a request for proposal or an invitation to bid pursuant to 76-15-1012.

(4) Vehicles, machinery, equipment, materials, or supplies may be rented if the rental results in a substantial savings over purchase.

History: En. Sec. 5, Ch. 155, L. 2015; amd. Sec. 5, Ch. 585, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 5, Ch. 585, L. 2025. Amendment effective October 1, 2025.

Cross-References

Competitive, advertised bidding required for certain large purchases or construction contracts, 7-5-2301.

76-15-1012. Terms and extensions. (1) Except as provided in 76-15-1011, prior to the issuance of a contract it must be determined that the contract meets the selection criteria for proposals and bidding as described in 18-4-303 and 18-4-304.

(2) A contract may not be made for a period of more than 7 years.

(3) A contract may be extended or renewed if:

(a) the terms of the extension or renewal, if any, are included in the solicitation;

(b) funds are available for the first fiscal period at the time of the agreement; and

(c) the total contract period, including any extension or renewal, does not exceed 7 years.

(4) Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of funds for the fiscal periods.

(5) If funds are not available to support continuation of performance in a subsequent fiscal period, the contract must be canceled.

History: En. Sec. 6, Ch. 155, L. 2015; amd. Sec. 6, Ch. 585, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 6, Ch. 585, L. 2025. Amendment effective October 1, 2025.

76-15-1013. Division of contracts prohibited. Contracts may not be divided or projects split to circumvent the provisions of this part.

History: En. Sec. 7, Ch. 155, L. 2015.

76-15-1014. Cooperative purchasing contracts. A conservation district may, in cooperation with one or more other conservation districts, conduct cooperative purchasing as defined in 18-4-401 for the procurement of supplies or services.

History: En. Sec. 8, Ch. 155, L. 2015.

Cross-References

Cooperative purchasing, Title 18, ch. 4, part 4.

76-15-1015. Services contracts. Contracts for architectural, engineering, and land surveying services as defined in 18-8-202 must comply with the state public procurement requirements of Title 18, chapter 8, part 2.

History: En. Sec. 2, Ch. 585, L. 2025.

Compiler's Comments

Effective Date: This section is effective October 1, 2025.

CHAPTER 16
GRAZING DISTRICTS

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Part 1
General Provisions

Part Cross-References

Disposition of Taylor Grazing Act funds, 17-3-221, 17-3-222.

76-16-101. Short title. This chapter may be cited as the "Grass Conservation Act".

History: En. Sec. 1, Ch. 208, L. 1939; amd. Sec. 35, Ch. 253, L. 1974; R.C.M. 1947, 46-2301(part).

76-16-102. Purpose. The purpose of this chapter is to provide for the conservation, protection, restoration, and proper utilization of grass, forage, and range resources of the state of Montana, to provide for the incorporation of cooperative nonprofit state districts, to provide a means of cooperation with the secretary of the interior as provided in the federal act known as the Taylor Grazing Act and any other governmental agency or department having jurisdiction over lands belonging to the United States or other state or federal agency as well as agencies having jurisdiction over federal lands, to permit the setting up of a form of grazing administration which will aid in the unification or control of all grazing lands within the state where the ownership is diverse and the lands intermingled, and to provide for the stabilization of the livestock industry and the protection of dependent commensurate properties.

History: En. Sec. 1, Ch. 208, L. 1939; amd. Sec. 35, Ch. 253, L. 1974; R.C.M. 1947, 46-2301(part); amd. Sec. 1, Ch. 31, L. 2001.

76-16-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Animal unit" means one cow, one horse, or five sheep, 6 months of age or older.

(2) "Animal unit month" or "AUM" means one cow/calf pair, one horse, or five sheep, grazed individually for 1 month, or an equivalency as determined by a local state district.

(3) "Assessment" means a special levy imposed on permittee members by the state district to raise funds for specific purposes as provided in 76-16-323(1). The term does not include fees.

(4) "Commensurate property" means land that is privately owned or controlled and that is not range.

(5) "Commission" means the Montana grass conservation commission provided for in 76-16-112.

(6) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(7) "Dependent commensurate property" is commensurate property that:

(a) requires the use of range in connection with it to maintain its proper use;

(b) produces or whose owner furnishes as part of the owner's past customary practice the proper feed necessary to maintain livestock during the time other than the established grazing period on the range; and

(c) has been used in connection with the range for a 5-year period immediately preceding the date of organization of the state district.

(8) "Directors" means the board of directors of a state district provided for in 76-16-301.

(9) "Grazing preference" is a right to obtain a grazing permit from a state district, expressed in animal unit months. Grazing preferences, expressed in AUMs, must be the basis for determining a member's proportionate interest in state district assets.

(10) "Permits" are evidence of grazing privileges granted by state districts.

(11) "Person" means a natural person or persons, unincorporated associations, partnerships, corporations, and governmental departments or agencies.

(12) "Range" is the land within a state district upon which grazing permits are granted to maintain livestock through the established grazing period.

(13) "Secretary" means the secretary of the Montana grass conservation commission.

(14) "State district" means a nonprofit cooperative organization incorporated under this chapter and its board of directors. The term includes all lands owned or controlled by the state district or its members.

History: **En. Sec. 2, Ch. 208, L. 1939; amd. Sec. 1, Ch. 199, L. 1945; amd. Sec. 36, Ch. 253, L. 1974; R.C.M. 1947, 46-2302(part); amd. Sec. 299, Ch. 418, L. 1995; amd. Sec. 2, Ch. 244, L. 1997; amd. Sec. 1, Ch. 401, L. 1999; amd. Sec. 2, Ch. 31, L. 2001.**

76-16-104. Role of the commission. (1) The commission shall assist in carrying out the purposes of this chapter, act in an advisory capacity with the boards of county commissioners, and supervise and coordinate the formation and operation of state districts that may be incorporated under this chapter.

(2) The commission may act in an advisory capacity to the boards of county commissioners for the purpose of working out uniform plans for the use of lands lying within or outside of the boundaries of state districts in conformity with recognized conservation and stabilization policies.

History: **En. Secs. 1, 17, Ch. 208, L. 1939; amd. Secs. 35, 47, Ch. 253, L. 1974; R.C.M. 1947, 46-2301(part), 46-2317; amd. Sec. 300, Ch. 418, L. 1995; amd. Sec. 3, Ch. 244, L. 1997; amd. Sec. 3, Ch. 31, L. 2001.**

76-16-105. Repealed. Sec. 45, Ch. 31, L. 2001.

History: **En. Sec. 7, Ch. 208, L. 1939; amd. Sec. 2, Ch. 199, L. 1945; amd. Sec. 37, Ch. 253, L. 1974; R.C.M. 1947, 46-2307(part); amd. Sec. 301, Ch. 418, L. 1995; amd. Sec. 4, Ch. 244, L. 1997.**

76-16-106. Commission fees. (1) The commission may impose fees against the state districts in an amount not in excess of 10 cents per animal unit month of grazing preference, based upon the number of animal unit months per year for which the state district grants permits, to defray expenses incurred by the commission in carrying out its powers and duties under this chapter.

(2) These fees must be held in the state special revenue fund to be expended by order and direction of the commission for the operation and administration of the commission under this chapter.

(3) If a state district fails or refuses to pay the fee on or before October 1 of each year and after the state district is provided with a full report from the department of all money collected and expended by it for its fiscal year preceding that date, the commission may compel and levy collection and payment by writ of mandate or other appropriate remedy against the state district.

History: En. Sec. 29, Ch. 208, L. 1939; amd. Sec. 1, Ch. 241, L. 1961; amd. Sec. 156, Ch. 147, L. 1963; amd. Sec. 1, Ch. 20, L. 1971; amd. Sec. 52, Ch. 253, L. 1974; R.C.M. 1947, 46-2331; amd. Sec. 1, Ch. 34, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 401, L. 1999; amd. Sec. 4, Ch. 31, L. 2001.

76-16-107. Range for wild game animals. In each state district a sufficient carrying capacity of range must be reserved for the maintenance of a reasonable number of wild game animals to use the range in common with livestock grazing in the state district. The commission may act in an advisory capacity to the department of fish, wildlife, and parks in the protection of wildlife within the boundaries of all state districts.

History: En. Sec. 30, Ch. 208, L. 1939; amd. Sec. 53, Ch. 253, L. 1974; R.C.M. 1947, 46-2332; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 3, Ch. 401, L. 1999; amd. Sec. 5, Ch. 31, L. 2001.

76-16-108. Nature of rights. (1) Grazing preferences or rights under this chapter through the creation of the state district or the issuance of permits based on AUMs of grazing preference are statutory and do not create any vested right, title, interest, or estate in or to the lands owned or controlled by the state district except as provided in this chapter.

(2) A person who chooses to become a member of a state district is bound by all the provisions of this chapter and is limited to the statutory remedies contained in this chapter, and a court has no jurisdiction to consider any right claimed under this chapter except by judicial review from the final decision of the commission as provided in this chapter.

History: (1)En. Sec. 14, Ch. 208, L. 1939; amd. Sec. 2, Ch. 163, L. 1953; amd. Sec. 44, Ch. 253, L. 1974; Sec. 46-2314, R.C.M. 1947; (2)En. Sec. 8, Ch. 208, L. 1939; amd. Sec. 3, Ch. 199, L. 1945; amd. Sec. 1, Ch. 163, L. 1953; amd. Sec. 38, Ch. 253, L. 1974; Sec. 46-2308, R.C.M. 1947; R.C.M. 1947, 46-2308(part), 46-2314(3); amd. Sec. 4, Ch. 401, L. 1999; amd. Sec. 6, Ch. 31, L. 2001.

76-16-109. Appeal procedure. (1) Notice of a decision of a state district must be given in writing by the secretary of the state district to the interested parties or their attorneys by certified mail at the address as shown on the records of the state district.

(2) A person affected by the decision of a state district may appeal to the commission, and the commission shall hear and decide all those appeals. An appeal from the decision of the state district to the commission may be taken by filing written notice of the appeal with the commission, by filing a copy of the notice of appeal with the secretary of the state district, and by serving a copy of the notice of appeal by certified mail upon any interested parties who have appeared or upon their attorneys within 60 days after receiving written notice of the decision of the state district. The appellant shall also file with the commission proof by affidavit of the filing and service of the notice of appeal. The appeal to the commission must be taken and review of the appeal must be upon the record of any hearing conducted and considered by the state district. However, the commission may, for good cause shown, permit additional testimony to be submitted.

History: En. Sec. 8, Ch. 208, L. 1939; amd. Sec. 3, Ch. 199, L. 1945; amd. Sec. 1, Ch. 163, L. 1953; amd. Sec. 38, Ch. 253, L. 1974; R.C.M. 1947, 46-2308(part); amd. Sec. 302, Ch. 418, L. 1995; amd. Sec. 5, Ch. 401, L. 1999; amd. Sec. 7, Ch. 31, L. 2001.

76-16-110. Administrative procedure act applicable. The Montana Administrative Procedure Act applies to this chapter.

History: En. Sec. 8, Ch. 208, L. 1939; amd. Sec. 3, Ch. 199, L. 1945; amd. Sec. 1, Ch. 163, L. 1953; amd. Sec. 38, Ch. 253, L. 1974; R.C.M. 1947, 46-2308(3).

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

76-16-111. What constitutes receipt of notice. In all cases where notices are given to permittees under this chapter by certified mail and addressed to the post-office address of the permittee as shown by the records of the state district, the notices must be considered received by the permittee when deposited in the United States post office by the state district or by the commission.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(8); amd. Sec. 6, Ch. 401, L. 1999; amd. Sec. 8, Ch. 31, L. 2001.

76-16-112. Creation of Montana grass conservation commission — membership — meetings — compensation. (1) There is a Montana grass conservation commission. The commission is composed of five members appointed by the governor to serve staggered 3-year terms.

(2) (a) The governor, after giving full consideration to representation by both large and small operators, shall appoint:

(i) two members who are either officers of or who serve on the board of directors of a state district;

(ii) two members who hold active grazing preference rights within a state district; and

(iii) one member of the public who possesses a general understanding of the livestock industry and the proper use of rangelands within state districts for the purpose of livestock production.

(b) Ex officio members may be appointed by the commission as needed.

(3) Members may not be appointed for more than three consecutive terms. The commission shall annually elect from among its members a presiding officer and a vice presiding officer. The presiding officer shall preside over all meetings of the commission, except that the vice presiding officer shall assume the duties of the presiding officer in the absence of the presiding officer.

(4) (a) The commission shall meet annually in Montana at a place determined by the presiding officer.

(b) The commission may hold other meetings at times and places as necessary upon the call of the presiding officer or the request of a majority of commission members and upon at least 7 days' written notice to the commission members of the time and place of the meeting.

(c) A majority of commission members constitutes a quorum for the transaction of business. The commission shall keep accurate records of all business that is considered, and the presiding officer shall sign all orders, minutes, and other documents of the commission.

(5) Commission members may receive no compensation for their services, but members are entitled to compensation for actual expenses incurred in carrying out their duties, including travel and per diem.

(6) The commission is allocated to the department for administrative purposes only as provided in 2-15-121. The commission shall, if it determines that personnel services are required, hire its own personnel, and 2-15-121(2)(d) does not apply. The secretary must be employed at the discretion of the commission.

History: En. Sec. 33, Ch. 401, L. 1999; amd. Sec. 9, Ch. 31, L. 2001; amd. Sec. 1, Ch. 114, L. 2015.

76-16-113. Powers of commission. The commission has all the powers enumerated in this chapter and any other powers necessary or incidental to carrying out the full purpose and intent of this chapter, including but not limited to:

(1) conducting hearings on issues brought before the commission and conducting investigations into matters affecting the commission or the operation of state districts, including appeals of decisions made by the board of directors of an individual state district or other actions taken in accordance with this chapter;

(2) administratively promoting and fostering an atmosphere of cooperation and mutual trust between the federal bureau of land management, the United States forest service, the department, and state districts and upholding the terms and conditions of any memorandum of understanding between those entities with regard to provisions noted in the Federal Land Policy and Management Act, the Public Rangelands Improvement Act, the Taylor Grazing Act, and this chapter;

(3) prescribing methodologies to be used for the reallocation of grazing preference within cooperative state districts that, for whatever reason, no longer have access to historical grazing preference records;

(4) preparing and standardizing various forms to be used by the state districts and supervising or regulating the organization and operation of state districts;

(5) issuing citations directed to any person requiring the person's attendance before the commission and subpoenaing witnesses and paying expenses that would be allowed in a court action;

(6) requiring an officer or director of a state district to submit records of the state district to the commission for the purpose of aiding an investigation conducted by the commission;

(7) requiring state districts to annually furnish itemized financial reports; and

(8) cooperating and entering into agreements on behalf of a state district, with its consent, with any governmental subdivision, department, or agency in order to promote the purposes of this chapter.

History: En. Sec. 34, Ch. 401, L. 1999; amd. Sec. 10, Ch. 31, L. 2001.

Part 2
Establishment of Districts

76-16-201. Procedure to incorporate state district. (1) If three or more persons who own or control commensurate property and are livestock operators within the area proposed to be created into a state district decide to incorporate a state district, they shall submit a statement in writing to the commission together with a plat showing the proposed boundaries of the area.

(2) The statement must set forth the name of the proposed state district, the county or counties in which the proposed state district is located, and the names and addresses of all operators of land and livestock units within the area. The commission may require any additional information it considers necessary.

(3) On receipt of the statement and plat and any additional information, the commission shall fix a time and place of a hearing for approval within the state district or county, which may not be less than 30 days or more than 60 days after receipt of the statement.

History: En. Sec. 9, Ch. 208, L. 1939; amd. Sec. 4, Ch. 199, L. 1945; amd. Sec. 39, Ch. 253, L. 1974; R.C.M. 1947, 46-2309(part); amd. Sec. 7, Ch. 401, L. 1999; amd. Sec. 11, Ch. 31, L. 2001.

76-16-202. Notice and hearing on question of incorporation. (1) The persons deciding to incorporate the state district shall cause notice of the hearing to be given by publishing a notice prescribed by the commission once a week for 2 consecutive weeks in a newspaper of general circulation in the area. The first publication must be at least 30 days prior to the date of hearing.

(2) The commission shall hear evidence offered in support of or in opposition to the creation of the state district and shall make a full inquiry into the advisability of its creation.

History: En. Sec. 9, Ch. 208, L. 1939; amd. Sec. 4, Ch. 199, L. 1945; amd. Sec. 39, Ch. 253, L. 1974; R.C.M. 1947, 46-2309(part); amd. Sec. 303, Ch. 418, L. 1995; amd. Sec. 8, Ch. 401, L. 1999; amd. Sec. 12, Ch. 31, L. 2001.

76-16-203. Certificate of approval. If the creation of the state district appears feasible, beneficial, and desirable to those who own or control more than 50% of the lands to be included in the state district, the commission may issue a certificate of approval.

History: En. Sec. 9, Ch. 208, L. 1939; amd. Sec. 4, Ch. 199, L. 1945; amd. Sec. 39, Ch. 253, L. 1974; R.C.M. 1947, 46-2309(part); amd. Sec. 304, Ch. 418, L. 1995; amd. Sec. 9, Ch. 401, L. 1999; amd. Sec. 13, Ch. 31, L. 2001.

76-16-204. Articles of incorporation. (1) Upon the issuance of the certificate of approval, three or more persons who own or control commensurate property and are livestock operators within or near the proposed state district may prepare articles of incorporation and file them in the office of the secretary of state without payment of fees.

(2) The articles must be accompanied by the certificate of approval and signed, sealed, and acknowledged. The articles, as prescribed by the commission, shall substantially state the following:

(a) the name of the state district, the last four words of which must be "cooperative state grazing district";

(b) the county or counties in which the state district is located and the place where the principal office and business of the state district will be conducted;

(c) the membership fee for each member of the state district, which may not be more than $5;

(d) the names and residences of the persons who subscribe, together with a statement that each owns or controls commensurate property and is a livestock operator within the proposed state district;

(e) the powers of the state district, which may not be inconsistent with this chapter;

(f) the officers of the state district, their principal duties, and the principal duties of the board of directors;

(g) the purpose for which the state district is incorporated.

History: En. Sec. 10, Ch. 208, L. 1939; amd. Sec. 40, Ch. 253, L. 1974; R.C.M. 1947, 46-2310(part); amd. Sec. 10, Ch. 401, L. 1999.

Cross-References

Formation of nonprofit corporation, Title 35, ch. 2, part 2.

76-16-205. Issuance of certificate of incorporation. If the articles substantially comply with the requirements set forth in 76-16-204 and are accompanied by the certificate of approval, the secretary of state shall issue to the state district a certificate of incorporation.

History: En. Sec. 10, Ch. 208, L. 1939; amd. Sec. 40, Ch. 253, L. 1974; R.C.M. 1947, 46-2310(part).

76-16-206. Amending articles of incorporation. (1) A state district may amend its articles of incorporation by a two-thirds vote of all members present at any regular or special meeting of its members and the approval of the commission. The only notice of the meeting that is necessary is the notice of meetings of members as required by the bylaws of the state district. The amended articles of incorporation and bylaws must be submitted to the commission for approval. Upon approval, the commission shall issue a certificate of approval. The amended articles of incorporation must be filed by the secretary of state without charge, but may not be filed unless accompanied by the certificate of approval. If the articles of incorporation are amended, the amendment must be filed with the county clerk or clerks.

(2) Upon the filing of the amended articles with the secretary of state and the proper county clerk or clerks, the state district possesses the same powers and is subject to the same obligations as if incorporated under this chapter.

History: En. Secs. 11, 18, Ch. 208, L. 1939; amd. Secs. 41, 48, Ch. 253, L. 1974; R.C.M. 1947, 46-2311(part), 46-2318; amd. Sec. 11, Ch. 401, L. 1999; amd. Sec. 14, Ch. 31, L. 2001.

76-16-207. Filing of map or plat of state district. A state district shall, upon completion of its organization, file with the commission and the county clerk and recorder of each county in which its lands lie a map or plat of the external boundaries of the state district showing the allocation of individual allotments, members running in common allotments, allotment names, and references to lands used as base properties, along with a copy of its articles of incorporation. If the boundaries of a state district are changed and the changes are approved by the commission after a hearing, the state district shall file with the county clerk or clerks and with the commission a revised map or plat indicating the changed boundaries.

History: En. Sec. 11, Ch. 208, L. 1939; amd. Sec. 41, Ch. 253, L. 1974; R.C.M. 1947, 46-2311(part); amd. Sec. 305, Ch. 418, L. 1995; amd. Sec. 12, Ch. 401, L. 1999.

76-16-208. Adoption of bylaws and periodic review — annual report. (1) A state district incorporated under this chapter shall within 60 days after its incorporation adopt bylaws approved by the commission. The bylaws may be amended or revised with the approval of the commission. Each incorporated state district shall review and update its bylaws to ensure compliance with this chapter and the general laws of this state. A review and update must be completed at reasonable intervals, not to exceed 5 years.

(2) Each state district incorporated under this chapter shall report annually to the commission any changes to the allocation of grazing preferences, redefinitions of grazing allotment boundaries, or dispositions of base properties within the state district. The annual reports must include an updated plat depicting current allocation of grazing preferences, grazing allotment boundaries, and a list of all members running in common allotments where more than one member may have grazing preferences.

History: En. Sec. 15, Ch. 208, L. 1939; amd. Sec. 45, Ch. 253, L. 1974; R.C.M. 1947, 46-2315; amd. Sec. 13, Ch. 401, L. 1999; amd. Sec. 15, Ch. 31, L. 2001.

76-16-209. Alteration of state district. (1) A state district may change the boundaries of the state district, merge with another state district organized under this chapter, or subdivide.

(2) A merger may not be made unless consented to by a majority of the members of each merging state district and approved by the commission after a hearing.

(3) A subdivision may not be made unless consented to by a majority of the members in the affected area and approved by the commission after a hearing.

History: En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(11); amd. Sec. 306, Ch. 418, L. 1995; amd. Sec. 14, Ch. 401, L. 1999; amd. Sec. 16, Ch. 31, L. 2001.

76-16-210. Request for dissolution of state district. A state district, with the written consent of three-fourths of its permittee members, may at any time request the commission to dissolve the state district subject to the preferences of this chapter. The commission shall establish procedures for the dissolution of any state district.

History: En. Sec. 25, Ch. 208, L. 1939; amd. Sec. 6, Ch. 163, L. 1953; amd. Sec. 51, Ch. 253, L. 1974; R.C.M. 1947, 46-2325(part); amd. Sec. 307, Ch. 418, L. 1995; amd. Sec. 15, Ch. 401, L. 1999.

76-16-211. Dissolution of state district. (1) If a state district ceases to function in accordance with its bylaws and this chapter and it appears to the commission that the reinstatement and future operation of the state district is no longer feasible, beneficial, and desirable to the majority of members of the state district, the commission, after a hearing and upon 30 days' notice in writing, published for 2 consecutive weeks in a newspaper of general circulation in or nearest to the state district, may dissolve the state district.

(2) A notice of the dissolution must be filed by the commission with the secretary of state and the clerk and recorder of the county or counties in which the state district is located.

History: En. Sec. 7, Ch. 208, L. 1939; amd. Sec. 2, Ch. 199, L. 1945; amd. Sec. 37, Ch. 253, L. 1974; R.C.M. 1947, 46-2307(1)(b); amd. Sec. 308, Ch. 418, L. 1995; amd. Sec. 16, Ch. 401, L. 1999; amd. Sec. 17, Ch. 31, L. 2001.

76-16-212. Distribution of state district assets. (1) When a hearing on the request for dissolution has been held before the commission and the consent of the board of directors has been given, the directors shall distribute the assets of the state district, either in items of property or in cash or both. Distribution must first be made with the approval of the commission to creditors up to the amount of their claims. Distribution must then be made with the approval of the commission to permittee members upon the basis of their proportionate interest in the assets.

(2) If assets must be liquidated, the directors shall offer them for sale at public auction or through another competitive bidding procedure after publication of a notice of the sale once a week for 2 successive weeks in a newspaper of general circulation within the state district. State district members holding grazing preference directly proportional to and associated with the assets being liquidated must be offered an opportunity to meet the highest bid submitted through the bidding process.

History: En. Sec. 25, Ch. 208, L. 1939; amd. Sec. 6, Ch. 163, L. 1953; amd. Sec. 51, Ch. 253, L. 1974; R.C.M. 1947, 46-2325(part); amd. Sec. 17, Ch. 401, L. 1999; amd. Sec. 18, Ch. 31, L. 2001.

76-16-213. Final report on dissolution proceedings. A final report of all dissolution proceedings must be made to the commission by the directors. Upon the approval of the report, the commission shall order the state district dissolved.

History: En. Sec. 25, Ch. 208, L. 1939; amd. Sec. 6, Ch. 163, L. 1953; amd. Sec. 51, Ch. 253, L. 1974; R.C.M. 1947, 46-2325(part); amd. Sec. 309, Ch. 418, L. 1995; amd. Sec. 19, Ch. 31, L. 2001.

Part 3
Organization, Administration, and Operation

Part Cross-References

Maintenance of fences, 76-16-320.
Animals unlawfully running at large, Title 81, ch. 4, part 2.
Herd districts, Title 81, ch. 4, part 3.

76-16-301. Powers and duties of directors. The directors of the state district shall manage and exercise the powers of the state district subject to its bylaws and to the regulation of the commission as provided in this chapter.

History: En. Sec. 13, Ch. 208, L. 1939; amd. Sec. 43, Ch. 253, L. 1974; R.C.M. 1947, 46-2313; amd. Sec. 20, Ch. 31, L. 2001.

Cross-References

One director to serve on County Planning Board, 76-1-211.

76-16-302. Membership in state district. (1) Membership in a state district is limited to persons engaged in the livestock business who own or lease forage-producing lands within or near the state district, except that the agent of a person entitled to membership in the state district may become a member in place of the agent's principal.

(2) If an agent becomes a member, the agent's qualifications for membership and the agent's obligations to and the privileges in the state district must be measured by those that the agent's principal would have had if the principal had elected to become a member. An agent and the agent's principal may not both be members of the state district unless the agent has individual qualifications for membership that are separable from and independent of those of the principal.

(3) Livestock producers owning or controlling base property within the designated boundaries of the state district and who held grazing preference during the preceding grazing season or at the time of voting must be designated as permittee members.

History: En. Sec. 14, Ch. 208, L. 1939; amd. Sec. 2, Ch. 163, L. 1953; amd. Sec. 44, Ch. 253, L. 1974; R.C.M. 1947, 46-2314(part); amd. Sec. 18, Ch. 401, L. 1999; amd. Sec. 21, Ch. 31, L. 2001.

76-16-303. Voting rights. Only permittee members in good standing as set forth in the state district bylaws are entitled to vote on all issues submitted to a vote of the members. Individuals or livestock producers who operate on temporary permits may not vote. A permittee member has only one vote. Voting by proxy may not be permitted unless clearly outlined procedures for proxy voting are incorporated into the state district bylaws.

History: En. Sec. 14, Ch. 208, L. 1939; amd. Sec. 2, Ch. 163, L. 1953; amd. Sec. 44, Ch. 253, L. 1974; R.C.M. 1947, 46-2314(part); amd. Sec. 19, Ch. 401, L. 1999; amd. Sec. 22, Ch. 31, L. 2001.

76-16-304. Effect of transfer of land. When a member disposes of a part of the lands or leases owned by that member so that another person becomes the owner of the lands or leases and acquires the right to membership, then the rights and interest involved must be determined by the directors of the state district with the approval of the commission.

History: En. Sec. 14, Ch. 208, L. 1939; amd. Sec. 2, Ch. 163, L. 1953; amd. Sec. 44, Ch. 253, L. 1974; R.C.M. 1947, 46-2314(2); amd. Sec. 20, Ch. 401, L. 1999.

76-16-305. Acquisition and disposal of property. A state district may:

(1) purchase or market livestock and livestock products and purchase supplies and equipment. These supplies may include among other things grass, grass seed, or forage, whether attached to and upon or severed from the land.

(2) acquire forage-producing lands, including agricultural lands when necessary to comply with the purposes and directives of this chapter, by lease, purchase, cooperative agreements, or otherwise, either from the United States, the state of Montana, or the county or counties in which the lands are located or from private owners. All lands to which a state district may acquire title may be disposed of by exchange, sale, or otherwise.

(3) acquire or construct fences, reservoirs, or other facilities for the care of livestock and lease or purchase lands for such purposes.

History: En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(1), (3), (5).

76-16-306. Management of grazing lands. A state district may:

(1) manage and control the use of its range and agricultural lands acquired under 76-16-305(2). This power includes the right to determine the size of preferences and permit according to a fixed method which shall be stated in the bylaws and which shall take into consideration the rating of dependent commensurate property and the carrying capacity of the range and may be subject to reservations, regulations, and limitations under the terms of agreements between the state district and any agency of the United States. The state district may also allot range to members or nonmembers and decrease or increase the size of permits if the range carrying capacity changes.

(2) undertake reseeding and other approved conservation and improvement practices of depleted range areas or abandoned farm lands and enter into cooperative agreements with the federal government or any other person for the reseeding or conservation and improvement practices;

(3) employ and discharge employees, riders, and other persons necessary to properly manage the state district.

History: En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(4), (8), (13); amd. Sec. 23, Ch. 266, L. 1979.

Cross-References

County weed control, Title 7, ch. 22, part 21.
Weed control — Department of Agriculture, Title 80, ch. 7, part 7.
Noxious weed management funding, Title 80, ch. 7, part 8.

76-16-307. Leasing of state lands. State land that is situated within the boundaries of a state district created under this chapter may be leased by one or more members of a state district if the lease is in accordance with existing laws and regulations of the department. The board of directors of a state district may assist members of a state district in acquiring and

administering a state grazing lease. The commission shall require that all state districts comply with this section.

History: En. Sec. 16, Ch. 208, L. 1939; amd. Sec. 46, Ch. 253, L. 1974; R.C.M. 1947, 46-2316; amd. Sec. 310, Ch. 418, L. 1995; amd. Sec. 21, Ch. 401, L. 1999; amd. Sec. 23, Ch. 31, L. 2001.

Cross-References

Lease of state grazing lands, 77-6-502, 77-6-504 through 77-6-508.

76-16-308. Regulation of stock grazing in state district. A state district may:

(1) specify the breed, quality, and number of male breeding animals that each member must furnish when stock is grazing in common in the state district;

(2) regulate the driving of stock over, across, into, or through the range and collect fees for driving stock.

History: En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(7), (12); amd. Sec. 22, Ch. 401, L. 1999.

76-16-309. Knowledge of state district boundaries responsibility of livestock owner. A person herding or in control of livestock in the approximate vicinity of a state district shall ascertain the boundary lines of the state district.

History: En. Sec. 11, Ch. 208, L. 1939; amd. Sec. 41, Ch. 253, L. 1974; R.C.M. 1947, 46-2311(part); amd. Sec. 24, Ch. 31, L. 2001.

76-16-310. Permit required to run livestock in state district. (1) An owner or person in control of livestock may not permit livestock to run at large or under herd within the exterior boundaries of a state district unless the owner or person in control of the livestock first obtains a grazing permit from the state district.

(2) The owner or person in control of livestock running at large or under herd within a state district without a permit from the state district or in excess of the permit is liable for all damages sustained by any member, permittee, or state district that are a result of the person's unpermitted use of the state district. If livestock wrongfully enter a state district, the owner or person in control of the trespassing livestock, who willfully or negligently permits livestock to run at large within the state district without first obtaining a permit from the state district, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine in an amount not less than $10 or more than $500. In addition to a fine, the owner or person is liable for all damages that are caused by the trespassing livestock.

(3) This provision does not require any person to obtain a grazing permit to graze livestock on land that the person owns or controls within a state district if the stock being grazed are restrained from running at large within the state district and from grazing on any other lands within the state district.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(1); amd. Sec. 25, Ch. 31, L. 2001.

76-16-311. Control of trespassing livestock. (1) The state district or its duly authorized agent controlling the land upon which wrongful entry is made by trespassing livestock may take the livestock into its possession and shall reasonably care for the livestock while in its possession and may retain possession of the livestock and have a lien and claim on the livestock as security for payment of damages and reasonable charges for the care of livestock while in its possession.

(2) The state district taking possession of trespassing livestock shall, within 72 hours after taking possession, notify the owner, owners, or person in charge of the livestock by a notice in writing describing the livestock by number of animals and brands on the livestock, if any, the amount of damages claimed to date, and the charge per animal unit per day for caring for and feeding the livestock thereafter. Charges may not exceed $2 per animal unit per day. The notice must generally describe the location where the livestock is held and require the owner or owners, within 10 days after receiving the notice, to take the livestock away after making full payment of all damages and costs.

(3) In case the parties do not agree as to the amount of damages, the state district taking possession of the livestock may at the expense of the owner retain a sufficient number of livestock to cover the amount of damages claimed by the state district. However, the owner may, upon furnishing a sufficient bond, conditioned for the payment to the state district of all sums, including costs that may be recovered by the state district in a civil action to foreclose its lien,

have returned to the owner all livestock held. The state district is liable to the owner for any loss or injury to the livestock accruing through the state district's lack of reasonable care.

(4) If the state district taking possession of the livestock fails to recover in a civil action a sum equal to that offered to the state district by the owner of the livestock, the state district shall bear the expense of keeping and feeding the livestock while in its possession. Notice may be given by personal service on the owner, owners, or person in charge of the livestock by sending notice by prepaid registered or certified mail, addressed to that person's last-known place of residence. Service by registered or certified mail is considered complete upon the deposit of the notice in the post office.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(2), (3); amd. Sec. 23, Ch. 401, L. 1999.

Cross-References

Application to trespass actions, 76-16-415.

76-16-312. Impoundment of trespassing livestock. The state district or the party taking up such trespassing livestock may cause same to be impounded at any suitable place within the state district or within 5 miles from the exterior boundaries thereof, and such livestock shall be deemed legally impounded if placed in a corral or upon land enclosed by a legal fence or placed in charge of a herder or herders.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(9).

76-16-313. Release of livestock. Upon demand, the state district or its authorized agent controlling the land or party in charge of such livestock shall release and deliver possession of such livestock to the owner or person entitled thereto upon payment of damages and charges, but said payment of damages and charges shall not act as a bar to the prosecution of said person, owner, or persons in control of such livestock, as hereinbefore provided.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(part).

76-16-314. Recovery of excess charge for damages. If the amount of damages or costs demanded by the party taking up such livestock is in excess of the actual damage and actual costs, the owner or person in charge of such livestock may pay same under protest and thereafter sue to recover the amount paid in excess of the actual damages and reasonable costs, provided suit to recover same is filed in the district court within 60 days after payment.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(part).

76-16-315. Procedure upon inability to locate person responsible for trespassing livestock. If a state district takes possession of livestock after due diligence to discover the owner or possessor of the livestock and the owner or possessor cannot be found or the ownership of the livestock discovered or if a party takes possession of livestock and the owner or claimant refuses to pay the amount of damages or charges or to furnish bonds, as provided in 76-16-311, the state district or person shall, within 10 days from the time that the livestock was taken into possession, deliver to the sheriff of the county in which the livestock was taken into possession or to the nearest state livestock inspector a statement containing the information required to be given in the notice set out in 76-16-311.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(part); amd. Sec. 24, Ch. 401, L. 1999.

76-16-316. Sale of trespassing livestock. (1) Upon receipt of the statement referred to in 76-16-315, the sheriff shall proceed to advertise and sell at public auction the livestock taken up.

(2) The livestock must be sold on 5 days' notice posted at the courthouse of each county in which any portion of the state district lies and in a newspaper of general circulation in the county. The sheriff may require from the state district a sufficient bond, conditioned upon the following:

(a) that the state district has used reasonable diligence to discover the owner of the stock and to notify the owner in the premises;

(b) that all requirements of law on the part of the state district to be performed in the premises have been performed; and

(c) that the sheriff is indemnified against all liability for the sale of the livestock except as to the sheriff's own failure to perform the things required by law.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(part); amd. Sec. 25, Ch. 401, L. 1999; amd. Sec. 26, Ch. 31, L. 2001.

76-16-317. Disposition of sale proceeds. (1) The proceeds of the sale must be applied by the sheriff, after first deducting the sheriff's costs and expenses, to the discharge of the claims and the costs of the proceedings in selling the property and to the payment of the damages, claims, and costs of the party taking up the livestock. The remainder of the proceeds, if any, may be paid over to the owner of the livestock, if known. If the owner is not known, then the remainder must be deposited with the county treasurer, who shall keep the remainder of the proceeds in a public fund to be designated state district fund (giving the name of the state district). A separate fund, styled as above, must be kept by the county treasurer for each state district within that county. The county treasurer shall record the number, type, and brands, if any, of animals sold, the amount received for the animals, and the amount of deductions. The record must be open to public inspection.

(2) A person claiming ownership of the livestock and submitting proof of ownership to the board of county commissioners within 1 year from date of sale is entitled to receive any excess received from the sale of the livestock, provided the claim is to the satisfaction of the board.

(3) Any money received from the sale of the livestock that is not claimed within 1 year after the sale must be transferred to the general fund of the county.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(7); amd. Sec. 27, Ch. 31, L. 2001.

76-16-318. Unlawful recovery of trespassing livestock. Any person taking or rescuing from the possession of a state district or an agent of a state district any animal taken up and impounded pursuant to 76-16-310 through 76-16-317 is guilty of a misdemeanor and upon conviction shall be punishable by a fine not exceeding $200.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(10); amd. Sec. 28, Ch. 31, L. 2001.

76-16-319. No liability for official acts. An officer, the commission, an employee of an officer or the commission, or an employee of any county or of any state district is not liable for any act performed in good faith in discharging official duties under this chapter. All acts are presumed to have been in good faith and in conformity with this chapter.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(8); amd. Sec. 311, Ch. 418, L. 1995; amd. Sec. 26, Ch. 401, L. 1999.

76-16-320. Maintenance of fences. (1) The cost of construction and maintenance of fence enclosing lands controlled by any member, nonmember, or state district within the external boundaries of the state district must be borne by the member, nonmember, or state district, unless otherwise provided for in the duly approved bylaws of the state district.

(2) In the event of the adoption of provisions to the bylaws of a state district whereby the cost of construction and maintenance of fence is to be distributed proportionately among the parties affected by the cost of construction and maintenance of fence, the state district's proportionate share of the costs and maintenance must be financed only by assessments levied by the state district against the permittee members of the state district and upon consent by 55% of the permittee members.

History: En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; R.C.M. 1947, 46-2326(11), (12); amd. Sec. 29, Ch. 31, L. 2001.

76-16-321. Construction of trespass and fence provisions. (1) Sections 76-16-310 through 76-16-320 shall not be interpreted to repeal or abolish any other legal remedies which a member, a permittee, or a state district may now have against trespassing livestock or the owner or persons in control thereof. The remedies provided by 76-16-310 through 76-16-320 are additional and supplemental to the remedies provided by any other laws of the state of Montana.

(2) Nothing contained in 76-16-310 through 76-16-320 shall be so construed as to restrict the right of parties to obtain injunctive relief from a court of competent jurisdiction.

History: (1)En. Sec. 8, Ch. 199, L. 1945; Sec. 46-2327, R.C.M. 1947; (2)En. Sec. 26, Ch. 208, L. 1939; amd. Sec. 7, Ch. 199, L. 1945; amd. Sec. 4, Ch. 257, L. 1955; Sec. 46-2326, R.C.M. 1947; R.C.M. 1947, 46-2326(13), 46-2327.

76-16-322. Fence-out requirement. Farming lands lying within the external boundaries of a state district must be protected by the owner or lessee to the extent of a legal fence as described in 81-4-101. The state district or its members are not liable for damages unless the farming lands are protected by a sufficient fence as described in this section.

History: En. Sec. 27, Ch. 208, L. 1939; R.C.M. 1947, 46-2329(part); amd. Sec. 1, Ch. 249, L. 2015.

76-16-323. State district finances. A state district may:

(1) fix and determine the amount of grazing fees to be imposed on members or nonmembers for the purpose of paying leases and operating expenses and fix and determine the amount of assessments to be made on members on a grazing preference basis for the purpose of acquiring lands by purchase or for the purpose of constructing improvements in the state district;

(2) set up and maintain a reasonable reserve fund;

(3) borrow money and if necessary mortgage the physical assets of a state district to provide for operation and development, provided that at least 80% of the permittee members of the state district consent in writing to the borrowing and the borrowing has been approved by the commission. This subsection does not confer power upon a state district to mortgage the property of the individual members of the state district.

History: En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(6), (9), (10); amd. Sec. 27, Ch. 401, L. 1999; amd. Sec. 30, Ch. 31, L. 2001.

76-16-324. Lawsuits involving district. A state district may sue or be sued in its corporate name.

History: En. Sec. 12, Ch. 208, L. 1939; amd. Sec. 42, Ch. 253, L. 1974; amd. Sec. 1, Ch. 22, L. 1977; R.C.M. 1947, 46-2312(2).

76-16-325. Compliance with commission orders required. (1) If a state district or the directors of a state district fail to comply with an order of the commission, the commission may order a hearing on the order within the state district or county and cite the directors of the state district to appear before the commission.

(2) If upon the hearing it appears that the directors refuse to perform the duties of their office as provided in this part and as set forth in the articles of incorporation and the bylaws of the association or refuse to comply with a lawful order of the commission, the directors may be summarily removed from office by the commission, and the state district shall elect new officers. During the period until the election, the commission may operate and manage the affairs of the state district.

(3) The expense of operating and managing the affairs of a noncomplying state district must be paid by the noncomplying state district before it may be reinstated.

History: En. Sec. 7, Ch. 208, L. 1939; amd. Sec. 2, Ch. 199, L. 1945; amd. Sec. 37, Ch. 253, L. 1974; R.C.M. 1947, 46-2307(part); amd. Sec. 312, Ch. 418, L. 1995; amd. Sec. 28, Ch. 401, L. 1999; amd. Sec. 31, Ch. 31, L. 2001.

Part 4
Grazing Permit System

76-16-401. Distribution of grazing preferences. When a state district is organized, grazing preferences must be distributed in the following manner:

(1) Any member of a state district owning or controlling dependent commensurate property may be given a grazing preference.

(2) If the carrying capacity of the range exceeds the reasonable needs of the members owning or controlling dependent commensurate property, members owning or controlling commensurate property shall have the grazing preference.

(3) If the carrying capacity of the range exceeds the reasonable needs of the members owning or controlling dependent commensurate property or commensurate property, temporary grazing permits may be issued to nonmembers or members, preferring those that have used the range 5 years immediately preceding the organization of the state district.

History: En. Sec. 20, Ch. 208, L. 1939; amd. Sec. 5, Ch. 199, L. 1945; amd. Sec. 3, Ch. 163, L. 1953; amd. Sec. 3, Ch. 257, L. 1955; R.C.M. 1947, 46-2320(part); amd. Sec. 32, Ch. 31, L. 2001.

76-16-402. Conversion of temporary permittee lands to dependent commensurate property. (1) When a temporary permit is utilized by a permittee in connection with forage-producing lands owned or controlled by the permittee within or near the state district for a period of any combination of 4 years out of 5, then the forage-producing lands owned or controlled by the permittee may be considered dependent commensurate property and, upon application, the state district may accordingly grant such permittee membership and grazing preference in the state district providing an application had been made for temporary rights for each of the 5 years.

(2) However, temporary permits are privileges granted from year to year, and their possession does not establish a grazing preference right unless a grazing preference right is expressly granted by the state district and in the manner provided in this part.

History: En. Sec. 20, Ch. 208, L. 1939; amd. Sec. 5, Ch. 199, L. 1945; amd. Sec. 3, Ch. 163, L. 1953; amd. Sec. 3, Ch. 257, L. 1955; R.C.M. 1947, 46-2320(part); amd. Sec. 33, Ch. 31, L. 2001.

76-16-403. Procedure if reduction in grazing privileges necessary. (1) If a reduction in grazing privileges becomes necessary, operators with temporary permits will be reduced on a proportionate basis prior to any reduction to any holder of grazing preference.

(2) Reductions of grazing preference for individual members that result from actions beyond the control of the state district or the board of directors of a state district or as a result of actions or of the failure to take appropriate actions by the holder of the grazing preference in question do not require a general reduction in grazing preference, and the state district may not be compelled to require proportionate reductions in grazing preference, by the membership of the state district.

History: En. Sec. 20, Ch. 208, L. 1939; amd. Sec. 5, Ch. 199, L. 1945; amd. Sec. 3, Ch. 163, L. 1953; amd. Sec. 3, Ch. 257, L. 1955; R.C.M. 1947, 46-2320(part); amd. Sec. 29, Ch. 401, L. 1999; amd. Sec. 34, Ch. 31, L. 2001.

76-16-404. Application for grazing preferences. Any person entitled to grazing preferences within any state district based on dependent commensurate property or commensurate property shall make application within 1 year after the state district is organized to qualify for grazing preference. However, all permittees must be entitled to benefits accruing under 76-16-401 through 76-16-403.

History: En. Sec. 21, Ch. 208, L. 1939; amd. Sec. 6, Ch. 199, L. 1945; R.C.M. 1947, 46-2321(part); amd. Sec. 35, Ch. 31, L. 2001.

76-16-405. Grazing preferences appurtenant to dependent commensurate property and commensurate property. Grazing preferences run with and are appurtenant to the dependent commensurate and commensurate property upon which they are based except as provided in this chapter. They are not subject to devise, bequest, attachment, execution, lease, sale, exchange, transfer, pledge, mortgage, or other process or transaction, except as provided in this section, 76-16-406 through 76-16-409, 76-16-412, and 76-16-413 or in the bylaws of a state district.

History: Ap. p. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; Sec. 46-2322, R.C.M. 1947; Ap. p. Sec. 2, Ch. 208, L. 1939; amd. Sec. 1, Ch. 199, L. 1945, amd. Sec. 37, Ch. 253, L. 1974; Sec. 46-2302, R.C.M. 1947; R.C.M. 1947, 46-2302(part), 46-2322(part).

76-16-406. Transfer of grazing preferences. (1) Upon application by a permittee, the state district with the approval of the commission may allow a grazing preference based on ownership or control of dependent commensurate or commensurate property to be transferred to other property of sufficient commensurability. However, in any transfer of grazing preference from dependent commensurate or commensurate property controlled but not owned by the applicant, the applicant must have had control and use of the dependent commensurate or commensurate property and the grazing preference appurtenant to the property for 5 consecutive years and must have established and maintained the livestock operation upon which the dependency was established by use or priority immediately prior to the application for transfer.

(2) In addition, the transfer may not interfere with the stability of livestock operations or with proper range management and may not affect adversely the established local economy. A transfer may not be allowed without the written consent of the owner or owners of the dependent commensurate or commensurate property from which the transfer is to be made and the owner or owners of any encumbrances on the property. A transfer is not effective until approved by the commission.

(3) All expenses involved under the application must be borne by the applicant.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(part); amd. Sec. 24, Ch. 266, L. 1979; amd. Sec. 30, Ch. 401, L. 1999; amd. Sec. 36, Ch. 31, L. 2001.

76-16-407. Processing of application for transfer. (1) When an application for transfer is presented to the board of directors of a state district, the secretary of the state district upon the direction of that board shall give notice, setting forth in general the application and the time and place of a hearing on the application as fixed by the board. A copy of the notice must be given or mailed to the applicant and must be published at least once a week for 2 successive weeks prior to the hearing in a newspaper published or generally circulated within the state district. The notice must also be posted for at least 2 full weeks prior to the hearing in three public places within the state district.

(2) The date of the hearing must be at least 15 days from the first publication of the notice. At the hearing the directors shall fully hear and determine the application and any objections to the application.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(2); amd. Sec. 37, Ch. 31, L. 2001.

76-16-408. Effect of transfer of grazing preference. Upon the allowance of a transfer under 76-16-405 through 76-16-407, the property from which the transfer is made loses its grazing preference to the extent of the grazing preference transferred.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(3); amd. Sec. 38, Ch. 31, L. 2001.

76-16-409. Transfer of underlying property. (1) When the land to which a grazing preference is attached changes its control or ownership, the grazing preference changes with the land and the person to which the control or ownership changes shall secure a nonuse permit or shall pay the usual grazing fees.

(2) If the person fails to secure a nonuse permit or refuses to pay the grazing fees, the grazing preferences may be revoked by the state district.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(part); amd. Sec. 39, Ch. 31, L. 2001.

76-16-410. Compensation to state district for range improvements. Subsequent lessees or owners of land shall compensate a state district for the value of range improvements constructed with the consent of the owner upon lands leased by the state district. The value must be the value at the expiration date of the lease. If the owner and the state district cannot agree as to the value, the state district may either remove or abandon the improvement. If the subsequent lessee and the state district cannot agree as to the value, it must be fixed by the commission.

History: En. Sec. 23, Ch. 208, L. 1939; amd. Sec. 50, Ch. 253, L. 1974; R.C.M. 1947, 46-2323; amd. Sec. 40, Ch. 31, L. 2001.

76-16-411. Grazing permits to owners of land not controlled by state district. (1) When any land is situated within the boundaries of a state district and is not leased or controlled by the state district and not surrounded by a legal fence, any person owning or controlling these lands has the right to obtain a grazing permit from the state district, the size of which must be determined by the carrying capacity of the land, full consideration being given for location of necessary stock water. The use of the permit is subject to all regulations by the state district.

(2) If the person owning or controlling the land declines to secure a permit or fails to lease the land to the state district at a fair lease rental and fails to fence the land at the person's expense, the person is not entitled to recover damages for trespass by stock grazing under permit, but the state district may not issue a permit to use the carrying capacity of the land.

History: En. Sec. 27, Ch. 208, L. 1939; R.C.M. 1947, 46-2329(part); amd. Sec. 41, Ch. 31, L. 2001.

76-16-412. Revocation of grazing preferences upon failure to obtain permits, pay fees, or obey rules. (1) If a person controls but does not own land and does not secure a nonuse permit and refuses to pay grazing fees, the state district shall notify the owner of the land by certified mail that the grazing preference attached to the land will be revoked unless the owner

pays the usual grazing fees to the state district within 60 days from the time of receipt of the notice. The state district may revoke the grazing preference if the owner or mortgagor does not pay the fees or secure a nonuse permit.

(2) If a permittee fails to pay grazing fees or assessments levied by the state district or fails to obtain a nonuse permit or violates any of the rules of the state district, the state district may notify the permittee and owner of the land by certified mail that the grazing preference attached to the land will be revoked unless the grazing fees or assessments are paid or the permittee ceases to violate the rules laid down by the state district within 60 days from the time of receipt of the notice. The state district may revoke the grazing preference if the permittee or owner fails to pay the charges or comply.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(part); amd. Sec. 42, Ch. 31, L. 2001.

76-16-413. Effect of revocation. (1) When a grazing preference is revoked, it is detached from the dependent commensurate or commensurate property to which it was formerly appurtenant and it immediately shifts to the state district. A revocation includes all rights, privileges, and authorities associated with a grazing preference.

(2) The state district may then allocate it to either dependent commensurate or commensurate property in the manner provided by its bylaws.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(7); amd. Sec. 31, Ch. 401, L. 1999; amd. Sec. 43, Ch. 31, L. 2001.

76-16-414. Equalization of state district assets. (1) Whenever a state district possesses reserves, the values of which are greater than its liabilities, and the state district determines that a part of the reserves is in excess of its reasonable needs to operate the state district, the state district may refund to the permittee members their proportionate share of the reserves as determined at the last annual accounting.

(2) Whenever a state district possesses reserves and physical assets, the values of which are greater than its liabilities, and a permittee member loses a grazing preference or any portion of a grazing preference, the permittee member is entitled to receive a proportionate share of the value of the excess from the state district, as determined by the annual accounting of the state district. Valuation must be as prescribed by the bylaws of the state district. The state district may set off the amount of any claim it may have against a former member.

(3) Whenever a new member receives a grazing preference, the new member shall, as a condition of receiving the grazing preference, pay to the state district the value of the equitable interest in the physical assets and reserve fund that accrues to the new member by virtue of membership. The value must be determined at the time of receiving a grazing preference, as prescribed by the bylaws of the state district, and upon the basis of the determination of value of physical assets and reserves made at the last annual accounting.

History: En. Sec. 24, Ch. 208, L. 1939; amd. Sec. 5, Ch. 163, L. 1953; R.C.M. 1947, 46-2324; amd. Sec. 32, Ch. 401, L. 1999; amd. Sec. 44, Ch. 31, L. 2001.

76-16-415. Application to trespass actions. Sections 76-16-405 through 76-16-409, 76-16-412, and 76-16-413 do not apply to trespass violations.

History: En. Sec. 22, Ch. 208, L. 1939; amd. Sec. 4, Ch. 163, L. 1953; amd. Sec. 1, Ch. 24, L. 1971; amd. Sec. 49, Ch. 253, L. 1974; R.C.M. 1947, 46-2322(part).

Cross-References

Control of trespassing livestock, 76-16-311.

CHAPTER 17
PUBLIC LAND ACCESS

Part 1 — Public Land Access Network Grant Program

76-17-101. Definitions.
76-17-102. Montana public land access network grant program — donations — rulemaking.
76-17-103. Montana public land access network account.
76-17-104. Grants — eligibility.

Part 1
Public Land Access Network Grant Program

76-17-101. *(Temporary)* **Definitions.** As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Board" means the board of land commissioners.

(2) "Department" means the department of natural resources and conservation. *(Terminates June 30, 2027—sec. 10, Ch. 374, L. 2017.)*

History: En. Sec. 1(5), Ch. 374, L. 2017.

76-17-102. *(Temporary)* **Montana public land access network grant program — donations — rulemaking.** (1) There is a Montana public land access network grant program. An individual or organization may seek a grant from the program to secure public access through private land to public land, as defined in 15-30-2380, for which there is no other legal public access or to enhance existing access to public land.

(2) The grant program is funded by private donations. State agencies shall, as appropriate, facilitate private donations to the Montana public land access network account established in 76-17-103, including but not limited to the following methods:

(a) a donation by a person of $1 or more above the price of a conservation license purchased pursuant to 87-2-202; and

(b) a donation by a person, as defined in 2-4-102, through the websites of the department of natural resources and conservation, the department of fish, wildlife, and parks, and the state of Montana.

(3) (a) The department of natural resources and conservation shall adopt a logo for the Montana public land access network grant program, using the acronym "MT-PLAN". The department of natural resources and conservation and the department of fish, wildlife, and parks shall use the logo on signs and maps indicating the locations and access points of public lands made accessible through the grant program.

(b) Subject to the limitations provided in 76-17-103(4), either department may be reimbursed from the Montana public land access network account established in 76-17-103 for reasonable costs, as determined by the board, that are associated with subsection (3)(a).

(4) The department of natural resources and conservation may adopt rules to implement the provisions of this part. *(Terminates June 30, 2027—sec. 10, Ch. 374, L. 2017.)*

History: En. Sec. 1(1)-(4), Ch. 374, L. 2017; amd. Sec. 2, Ch. 221, L. 2019; amd. Sec. 4, Ch. 507, L. 2023.

76-17-103. *(Temporary)* **Montana public land access network account.** (1) There is a Montana public land access network account to the credit of the department in the state special revenue fund established in 17-2-102. Money deposited in the account is statutorily appropriated, as provided in 17-7-502, and may be used only for the purposes of this part.

(2) The following funds must be deposited in the account:

(a) money received pursuant to 76-17-102 or from any other source for the purposes of this part; and

(b) any interest or income earned on the account.

(3) The department shall make disbursements from the account for access project grants that are approved by the board pursuant to 76-17-104.

(4) An amount that equals up to 10% of the grants awarded pursuant to this part in each fiscal year may be used by the department for administrative purposes. In addition, during the first 5 years of the grant program, the department may use up to 5% of the funds in the account each year to advertise the Montana public land access network. After that, the department may use up to 2% of the funds in the account each year for advertising. All administrative costs paid from the account must be approved by the board.

(5) Any unspent or unencumbered money in the account at the end of a fiscal year must remain in the account.

(6) Any unspent or unencumbered money in the account on June 30, 2027, must be transferred to a state special revenue account to the credit of the department and used to secure public access to public land for which there is no other legal public access or to enhance existing access to public land. *(Terminates June 30, 2027—sec. 10, Ch. 374, L. 2017.)*

History: En. Sec. 2, Ch. 374, L. 2017.

76-17-104. *(Temporary)* **Grants — eligibility.** (1) An individual or organization may apply to the department for a grant to pay for costs associated with an access project that secures public access through private land to public land, as defined in 15-30-2380, for which there is no other legal public access or to enhance existing access to public land. The costs must include payments to the owner of private land who allows public access. Grants may not be made to pay costs associated with litigation related to public access.

(2) An access project that is eligible to receive a grant:

(a) (i) except as provided in subsection (2)(a)(ii), must provide public access for recreational purposes; and

(ii) if the access project would provide access to state trust land, as defined in 77-1-101, must provide access for all lawful purposes to the state trust land;

(b) may have a term that ranges from 3 years to in perpetuity. A termed easement that is awarded a grant pursuant to this section creates no expectation of access after the term expires.

(c) may not provide access to a previously inaccessible parcel of land if that parcel is leased state land under Title 77, chapter 1, and the lessee is not the landowner granting access to the parcel.

(3) The department shall make recommendations to the board regarding grant applications received pursuant to this section. A grant must be approved by the board before it is disbursed pursuant to 76-17-103.

(4) An access easement that is awarded a grant pursuant to this part must be held and enforced by the department.

(5) The department shall report the details of approved access project grants to the legislative auditor. *(Terminates June 30, 2027—sec. 10, Ch. 374, L. 2017.)*

History: En. Sec. 3, Ch. 374, L. 2017.

CHAPTERS 18 THROUGH 20
RESERVED

CHAPTER 21
YOUTH CONSERVATION CORPS
(Terminated)

Part 1 — General (Terminated)

Part 2 — Projects — Corpsmembers (Terminated)

Part 3 — Mitigation of Impacts on Established Labor (Terminated)

Part 1
General
(Terminated)

76-21-101. Terminated. Sec. 14, Ch. 652, L. 1983.

History: En. Sec. 1, Ch. 652, L. 1983.

76-21-102. Terminated. Sec. 14, Ch. 652, L. 1983.

History: En. Sec. 2, Ch. 652, L. 1983.

76-21-103. Terminated. Sec. 14, Ch. 652, L. 1983.

History: En. Sec. 3, Ch. 652, L. 1983.

Part 2
Projects — Corpsmembers
(Terminated)

76-21-201. Terminated. Sec. 14, Ch. 652, L. 1983.

History: En. Sec. 4, Ch. 652, L. 1983.

76-21-202 through 76-21-204 reserved.

76-21-205. Terminated. Sec. 14, Ch. 652, L. 1983.
History: En. Sec. 7, Ch. 652, L. 1983.

76-21-206. Terminated. Sec. 14, Ch. 652, L. 1983.
History: En. Sec. 8, Ch. 652, L. 1983.

76-21-207. Terminated. Sec. 14, Ch. 652, L. 1983.
History: En. Sec. 9, Ch. 652, L. 1983.

Part 3
Mitigation of Impacts on Established Labor (Terminated)

76-21-301. Terminated. Sec. 14, Ch. 652, L. 1983.
History: En. Sec. 10, Ch. 652, L. 1983.

76-21-302. Terminated. Sec. 14, Ch. 652, L. 1983.
History: En. Sec. 5, Ch. 652, L. 1983.

76-21-303. Terminated. Sec. 14, Ch. 652, L. 1983.
History: En. Sec. 6, Ch. 652, L. 1983.

CHAPTER 22
SAGE GROUSE HABITAT MANAGEMENT (Renumbered)

Part 1 — Montana Greater Sage-Grouse Stewardship Act (Renumbered)

Part 1
Montana Greater Sage-Grouse Stewardship Act (Renumbered)

76-22-101. Renumbered 87-5-901. Sec. 3, Ch. 326, L. 2021.

76-22-102. Renumbered 87-5-902. Sec. 3, Ch. 326, L. 2021.

76-22-103. Renumbered 87-5-903. Sec. 3, Ch. 326, L. 2021.

76-22-104. Renumbered 87-5-904. Sec. 3, Ch. 326, L. 2021.

76-22-105. Renumbered 87-5-905. Sec. 3, Ch. 326, L. 2021.

76-22-106 through 76-22-108 reserved.

76-22-109. Renumbered 87-5-909. Sec. 3, Ch. 326, L. 2021.

76-22-110. Renumbered 87-5-910. Sec. 3, Ch. 326, L. 2021.

76-22-111. Renumbered 87-5-911. Sec. 3, Ch. 326, L. 2021.

76-22-112. Renumbered 87-5-912. Sec. 3, Ch. 326, L. 2021.

76-22-113. Renumbered 87-5-913. Sec. 3, Ch. 326, L. 2021.

76-22-114. Renumbered 87-5-914. Sec. 3, Ch. 326, L. 2021.

76-22-115. Renumbered 87-5-915. Sec. 3, Ch. 326, L. 2021.

76-22-116. Renumbered 87-5-916. Sec. 3, Ch. 326, L. 2021.

76-22-117. Renumbered 87-5-917. Sec. 3, Ch. 326, L. 2021.

76-22-118. Renumbered 87-5-918. Sec. 3, Ch. 326, L. 2021.

CHAPTERS 23 AND 24
RESERVED

CHAPTER 25
MONTANA LAND USE PLANNING ACT

Part 1 — General Provisions

76-25-101. Short Title.
76-25-102. Legislative purpose, findings, and intent.
76-25-103. Definitions.
76-25-104. Planning commission.
76-25-105. Applicability and compliance.
76-25-106. Public participation.

Part 2 — Land Use Plan

76-25-201. Adoption or amendment of land use plan and future land use map.
76-25-202. Update of land use plan or future land use map.
76-25-203. Existing conditions and population projections.
76-25-204 and 76-25-205 reserved.
76-25-206. Housing.
76-25-207. Local services and facilities.
76-25-208. Economic development.
76-25-209. Natural resources, environment, and hazards.
76-25-210 through 76-25-212 reserved.
76-25-213. Land use and future land use map.
76-25-214. Area plans.
76-25-215. Issue plans.
76-25-216. Implementation.

Part 3 — Zoning

76-25-301. Authority to adopt local zoning regulations.
76-25-302. Encouragement of development of housing.
76-25-303. Limitations on zoning authority.
76-25-304. Adoption and amendment of zoning regulations.
76-25-305. Effect on zoning regulations and map.
76-25-306. Zoning and annexation.
76-25-307. Interim zoning ordinances.

Part 4 — Subdivision Regulations

76-25-401. Authority to adopt local subdivision regulations — limitations.
76-25-402. Exemptions to subdivision review.
76-25-403. Adoption and amendment of subdivision regulations.
76-25-404. Contents of local subdivision regulations.
76-25-405 through 76-25-407 reserved.
76-25-408. Local review procedure for divisions of land.
76-25-409. Effect of preliminary plat approval.
76-25-410. Local review procedure for final plats.
76-25-411. Filing and recordation of plats and certificates of survey.
76-25-412. Survey requirements.
76-25-413. Public improvements and extension of capital facilities.

Part 5 — Fees, Variances, Appeals, Enforcement, and Penalties

76-25-501. Fees.
76-25-502. Variances.
76-25-503. Appeals — public hearing and notice.
76-25-504. Enforcement and penalties.

Part 1
General Provisions

76-25-101. Short Title. This chapter may be cited as the "Montana Land Use Planning Act".

History: En. Sec. 1, Ch. 500, L. 2023.

76-25-102. Legislative purpose, findings, and intent. (1) It is the purpose of this chapter to promote the health, safety, and welfare of the people of Montana through a system of comprehensive planning that balances private property rights and values, public services and infrastructure, the human environment, natural resources, and recreation, and a diversified and sustainable economy.

(2) The legislature finds that coordinated and planned growth will encourage and support:

(a) sufficient housing units for the state's growing population that are attainable for citizens of all income levels;

(b) the provision of adequate public services and infrastructure in the most cost-effective manner possible, shared equitably among all residents, businesses, and industries;

(c) the natural environment, including wildlife and wildlife habitat, sufficient and clean water, and healthy air quality;

(d) agricultural, forestry, and mining lands for the production of food, fiber, and minerals and their economic benefits;

(e) the state's economy and tax base through job creation, business development, and the revitalization of established communities;

(f) persons, property, infrastructure, and the economy against natural hazards, such as flooding, earthquake, wildfire, and drought; and

(g) local consideration, participation, and review of plans for projected population changes and impacts resulting from those plans.

(3) It is the legislature's intent that the comprehensive planning authorized in this chapter:

(a) provides the broadest and most comprehensive level of collecting data, identifying and analyzing existing conditions and future opportunities and constraints, acknowledging and addressing the impacts of development on each jurisdiction, and providing for broad public participation;

(b) serves as the basis for implementing specific land use regulations that are in substantial compliance with the local land use plan;

(c) provides for local government approval of development proposals in substantial compliance with the land use plan, based on information, analysis, and public participation provided during the development and adoption of the land use plan and implementing regulations; and

(d) allows for streamlined administrative review decisionmaking for site-specific development applications.

History: En. Sec. 2, Ch. 500, L. 2023.

76-25-103. Definitions. As used in this chapter, unless the context or subject matter clearly requires otherwise, the following definitions apply:

(1) "Aggrieved party" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision.

(2) "Applicant" means a person who seeks a land use permit or other approval of a development proposal.

(3) "Built environment" means man-made or modified structures that provide people with living, working, and recreational spaces.

(4) "Cash-in-lieu donation" is the amount equal to the fair market value of unsubdivided, unimproved land.

(5) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

(6) "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.

(7) "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this chapter. The conveyance of a tract of record or an entire parcel of land that was created by a previous division of land is not a division of land.

(8) "Dwelling " means a building designed for residential living purposes, including single-unit, two-unit, and multi-unit dwellings.

(9) "Dwelling unit" means one or more rooms designed for or occupied exclusively by one household.

(10) "Examining land surveyor" means a registered land surveyor appointed by the governing body to review surveys and plats submitted for filing.

(11) "Factory-built housing" means a factory-assembled structure intended for residential use that:

(a) is equipped with the necessary service connections but not made to be readily movable as a unit or units;

(b) is designed to be used with a permanent foundation; and

(c) is not certified by the United States department of housing and urban development but meets the inspection requirements of Title 50, chapter 60, part 4.

(12) "Final plat" means the final drawing of the subdivision and dedication required by this chapter to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in this chapter and in regulations adopted pursuant to this chapter.

(13) "Four-unit dwelling" or "fourplex" means a building designed for four attached dwelling units in which the dwelling units share a common separation, such as a ceiling or wall, and in which access cannot be gained between the units through an internal doorway, excluding common hallways.

(14) "Homeowners' association" means an association of all the owners of real property within a geographic area defined by physical boundaries that:

(a) is formally governed by a declaration of covenants, bylaws, or both;

(b) may be authorized to impose assessments that, if unpaid, may become a lien on a member's real property; and

(c) may enact or enforce rules concerning the operation of the community or subdivision.

(15) "Immediate family" means a spouse, children by blood or adoption, and parents.

(16) "Irrigation district" means a district established pursuant to Title 85, chapter 7.

(17) "Jurisdictional area" or "jurisdiction" means the area within the boundaries of the local government. For municipalities, the term includes those areas the local government anticipates may be annexed into the municipality over the next 20 years.

(18) "Land use permit" means an authorization to complete development in conformance with an application approved by the local government.

(19) "Land use plan" means the land use plan and future land use map adopted in accordance with this chapter.

(20) "Land use regulations" means zoning, zoning map, subdivision, or other land use regulations authorized by state law.

(21) "Local governing body" or "governing body" means the elected body responsible for the administration of a local government.

(22) "Local government" means a county, consolidated city-county, or an incorporated municipality to which the provisions of this chapter apply as provided in 76-25-105.

(23) "Manufactured housing" means a dwelling for a single household, built offsite in a factory that is in compliance with the applicable prevailing standards of the United States department of housing and urban development at the time of its production. A manufactured home does not include a mobile home or housetrailer, as defined in 15-1-101.

(24) "Ministerial permit" means a permit granted upon a determination that a proposed project complies with the applicable regulations and meets all established standards set forth in the applicable regulations. The determination must be based on objective standards, involving little or no personal judgment, and must be issued by the planning administrator.

(25) "Multi-unit dwelling" means a building designed for five or more attached dwelling units in which the dwelling units share a common separation, such as a ceiling or wall, and in which access cannot be gained between the units through an internal doorway, excluding common hallways.

(26) "Permitted use" means a use that may be approved by issuance of a ministerial permit.

(27) "Planning administrator" means the person designated by the local governing body to review, analyze, provide recommendations, or make final decisions on any or all zoning, subdivision, and other development applications as required in this chapter, or a person designated and supervised by the planning administrator to perform the duties.

(28) "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.

(29) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a governing body.

(30) "Public utility" has the meaning provided in 69-3-101, except that for the purposes of this chapter, the term includes a county water or sewer district as provided for in Title 7, chapter 13, parts 22 and 23, and municipal sewer or water systems and municipal water supply systems established by the governing body of a municipality pursuant to Title 7, chapter 13, parts 42, 43, and 44.

(31) "Single-room occupancy development" means a development with dwelling units in which residents rent a private bedroom with a shared kitchen and bathroom facilities.

(32) "Single-unit dwelling" means a building designed for one dwelling unit that is detached from any other dwelling unit.

(33) "Subdivider" means a person who causes land to be subdivided or who proposes a subdivision of land.

(34) "Subdivision" means a division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to the parcels may be sold or otherwise transferred and includes any resubdivision and a condominium. The term also means an area, regardless of its size, that provides or will provide multiple spaces for rent or lease on which recreational camping vehicles or mobile homes will be placed.

(35) "Subdivision guarantee" means a form of guarantee that is approved by the commissioner of insurance and is specifically designed to disclose the information required in 76-25-413.

(36) "Substantial compliance" means:

(a) with respect to the amendment of an adopted land use plan, that all facets of the proposed amendments, when taken together, comply, not strictly and rigidly but substantially, with the densities, standards, and community intent for development of the community as set forth in the jurisdiction's adopted land use plan;

(b) with respect to the adoption or amendment of a zoning map, zoning regulation, or subdivision regulation, that all facets of the proposed map, regulation, or amendment, when taken together, comply, not strictly and rigidly but substantially, with the densities, standards, and community intent for development of the site as set forth in the jurisdiction's applicable adopted land use plan; and

(c) with respect to the proposed development of a particular site, that all facets of the proposed development, when taken together, comply, not strictly and rigidly but substantially, with the densities and standards for development of the site as set forth in the jurisdiction's applicable adopted zoning regulations, zoning map, and subdivision regulations.

(37) "Tract of record" means an individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office.

(38) "Three-unit dwelling" or "triplex" means a building designed for three attached dwelling units in which the dwelling units share a common separation, such as a ceiling or wall, and in which access cannot be gained between the units through an internal doorway, excluding common hallways.

(39) "Two-unit dwelling" or "duplex" means a building designed for two attached dwelling units in which the dwelling units share a common separation, such as a ceiling or wall, and in which access cannot be gained between the units through an internal doorway.

History: En. Sec. 3, Ch. 500, L. 2023; amd. Sec. 4, Ch. 187, L. 2025; amd. Sec. 4, Ch. 376, L. 2025; amd. Sec. 7, Ch. 555, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 4, Ch. 187, L. 2025. Amendment effective April 17, 2025.

See 2025 Session Law for amendment made by sec. 4, Ch. 376, L. 2025. Amendment effective October 1, 2025.

See 2025 Session Law for amendment made by sec. 7, Ch. 555, L. 2025. Amendment effective May 8, 2025.

Retroactive Applicability: Section 8, Ch. 187, L. 2025, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to final subdivision plats recorded on or after October 1, 1973."

76-25-104. Planning commission. (1) (a) Each local government shall establish, by ordinance or resolution, a planning commission.

(b) Any combination of local governments may create a multijurisdictional planning commission or join an existing commission pursuant to an interlocal agreement.

(c) (i) Any combination of legally authorized planning boards, zoning commissions, planning and zoning commissions, or boards of adjustment existing prior to May 17, 2023, may be considered duly constituted under this chapter as a planning commission by agreement of the governing bodies of each jurisdiction represented on the planning commission.

(ii) If more than one legally authorized planning board, zoning commission, or planning and zoning commission exists within a jurisdiction, the governing bodies of each jurisdiction may agree to:

(A) designate, combine, consolidate, or modify one or more of the authorized boards or commissions as the planning commission; or

(B) create a new planning commission pursuant to this section and disband the existing boards and commissions.

(d) (i) A local government subject to this chapter may continue to be represented on an existing city-county planning board, joint city-county planning board, or consolidated city-county planning board as authorized under Title 76, chapter 1, with other local governments and share in the membership duties and costs of the board.

(ii) A local government's continued participation in a planning board as set forth in subsection (1)(d)(i) is solely for the purposes set forth in Title 76, chapter 1.

(2) (a) (i) Each planning commission must consist of an odd number of no fewer than three voting members who are confirmed by majority vote of each local governing body.

(ii) Each jurisdiction must be equally represented in the membership of a multijurisdictional planning commission.

(b) The planning commission shall meet at least once every 6 months.

(c) Minutes must be kept of all meetings of the planning commission, and all meetings and records must be open to the public.

(d) A majority of currently appointed voting members of the planning commission constitutes a quorum. A quorum must be present for the planning commission to take official action. A favorable vote of at least a majority of the quorum is required to authorize an action at a regular or properly called special meeting.

(e) The ordinance, resolution, or interlocal agreement creating the planning commission must set forth the requirements for appointments, terms, qualifications, removal, vacancies, meetings, notice of meetings, officers, reimbursement of costs, bylaws, or any other requirement determined necessary by the local governing body.

(3) (a) Except as set forth in subsection (3)(b), the planning commission shall review and make recommendations to the local governing body regarding the development, adoption, amendment, review, and approval or denial of the following documents:

(i) the land use plan and future land use map as provided in 76-25-201;

(ii) zoning regulations and map as provided in Title 76, chapter 25, part 3;

(iii) subdivision regulations as provided in Title 76, chapter 25, part 4; and

(iv) any other legislative land use planning document the local governing body designates.

(b) In accordance with 76-25-503, the planning commission shall hear and decide appeals from any site-specific land use decisions made by the planning administrator pursuant to the adopted regulations described in subsection (3)(a). Decisions of the planning commission may be appealed to the local governing body as provided in 76-25-503.

(4) The planning commission may be funded pursuant to 76-1-403, 76-1-404, and 76-1-406.

History: En. Sec. 4, Ch. 500, L. 2023; amd. Sec. 8, Ch. 555, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 8, Ch. 555, L. 2025. Amendment effective May 8, 2025.

76-25-105. Applicability and compliance. (1) A municipality with a population at or exceeding 5,000 located within a county with a population at or exceeding 70,000 in the most recent decennial census shall comply with the provisions of this chapter.

(2) (a) Except as provided in subsection (2)(b), any municipality that meets the population thresholds of subsection (1) on May 17, 2023, shall comply with the provisions of this chapter within 3 years of May 17, 2023.

(b) A municipality that has adopted a growth policy within 5 years prior to May 17, 2023, shall comply with the provisions of this chapter within 5 years of the date that the growth policy was adopted or within the deadline established in subsection (2)(a), whichever occurs later.

(c) A municipality that meets the population thresholds of subsection (1) on any decennial census completed after May 17, 2023, shall comply with the provisions of this chapter by December 31 of the third year after the date of the decennial census.

(3) (a) A local government that is not required to comply with the provisions of this chapter may decide to comply with the provisions of this chapter by an affirmative vote of the local governing body. After an affirmative vote, the governing body shall comply with the provisions of this chapter by December 31 of the fifth year after the date of the vote.

(b) A local government that votes pursuant to subsection (3)(a) to comply with the provisions of this chapter may subsequently decide to not comply with the provisions of this chapter by an affirmative vote.

(4) A local government that complies with this chapter is not subject to any provision of Title 76, chapters 1, 2, 3, or 8.

History: En. Sec. 5, Ch. 500, L. 2023.

76-25-106. Public participation. (1) (a) A local government shall provide continuous public participation when adopting, amending, or updating a land use plan or regulations pursuant to this chapter.

(b) Public participation in the adoption, amendment, or update of a land use plan or implementing regulations must provide for, at a minimum:

(i) dissemination of draft documents;

(ii) an opportunity for written and verbal comments;

(iii) public meetings after effective notice;

(iv) electronic communication regarding the process, including online access to documents, updates, and comments; and

(v) an analysis of and response to public comments.

(2) A local government shall document and retain all public outreach and participation performed as part of the administrative record in accordance with the retention schedule published by the secretary of state.

(3) (a) A local government may decide the method for providing:

(i) general public notice and participation in the adoption, amendment, or update of a land use plan or regulation; and

(ii) notice of written comment on applications for land use permits pursuant to this chapter.

(b) All notices must clearly specify the nature of the land use plan or regulation under consideration, what type of comments the local government is seeking from the public, and how the public may participate.

(c) The local government shall document what methods it used to provide continuous participation in the development, adoption, or update of a land use plan or regulation and shall document all comments received.

(d) The department of commerce established in 2-15-1801 and functioning pursuant to 90-1-103 shall develop a list of public participation methods and best practices for use by local governments in developing, adopting, or updating a land use plan or regulations.

(4) Throughout the adoption, amendment, or update of the land use plan or regulation processes, a local government shall emphasize that:

(a) the land use plan is intended to identify the opportunities for development of land within the planning area for housing, businesses, agriculture, and the extraction of natural resources, while acknowledging and addressing the impacts of that development on adjacent properties, the community, the natural environment, public services and facilities, and natural hazards;

(b) the process provides for continuous and extensive public notice, review, comment, and participation in the development of the land use plan or regulation; and

(c) the final adopted land use plan, including amendments or updates to the final adopted land use plan, comprises the basis for implementing land use regulations in substantial compliance with the land use plan.

(5) The local governing body shall adopt a public participation plan detailing how the local government will meet the requirements of this section.

History: En. Sec. 6, Ch. 500, L. 2023; amd. Sec. 9, Ch. 555, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 9, Ch. 555, L. 2025. Amendment effective May 8, 2025.

Part 2
Land Use Plan

76-25-201. Adoption or amendment of land use plan and future land use map. (1) The local governing body shall adopt or amend by resolution a land use plan and future land use map in accordance with this part only after consideration by and on the recommendation of the planning commission.

(2) Prior to making a recommendation to the governing body to adopt or amend a land use plan and future land use map, the planning commission shall:

(a) provide public notice and participation in accordance with 76-25-106; and

(b) accept, consider, and respond to public comment on the proposed land use plan and future land use map. All public comment must be part of the administrative record transmitted to the governing body.

(3) After meeting the requirements of subsection (2), the planning commission shall make a final recommendation to the governing body to adopt, modify, or reject the proposed land use plan and future land use map or any amendment to the proposed land use plan and future land use map.

(4) The governing body shall incorporate any existing neighborhood, area, or plans adopted pursuant to Title 76, chapter 1, that meet the requirements of this chapter into the land use plan and future land use map.

(5) (a) The governing body shall consider the recommendation of the planning commission to adopt, modify, or reject the proposed land use plan and future land use map or any amendment to the proposed land use plan and future land use map.

(b) After providing public notice and participation in accordance with 76-25-106, the governing body may adopt, with any revisions the local governing body considers appropriate, or reject the land use plan and future land use map or any amendment to the proposed land use plan and future land use map proposed by the planning commission.

(6) An amendment to a land use plan or future land use map may be initiated:

(a) by majority vote of the governing body;

(b) on petition of at least 15% of the electors of the local government jurisdiction to which the plan applies, as registered at the last general election; or

(c) by a property owner applying for a zoning, subdivision, or other land use permit.

(7) (a) After the initiation of an amendment to a land use plan or future land use map allowed in subsection (6), the planning commission shall make a preliminary determination of whether the proposed land use plan or future land use map amendment results in new or increased impacts to or from local facilities, services, natural resources, natural environment, or natural hazards from those previously described and analyzed in the assessment conducted in the development of the land use plan.

(b) If the planning commission finds new or increased impacts from the proposed land use plan or future land use map amendment, the local government shall collect additional data and conduct additional analysis necessary to provide the planning commission with the opportunity to consider all potential impacts resulting from the amendment before proceeding under subsection (2).

(8) The governing body may not amend the land use plan or future land use map unless:

(a) the amendment is found in substantial compliance with the land use plan; and

(b) the potential impacts resulting from development in substantial compliance with the proposed amendment have been made available for public review and comment and have been fully considered by the governing body.

History: En. Sec. 7, Ch. 500, L. 2023.

76-25-202. Update of land use plan or future land use map. (1) After a local government adopts a land use plan and future land use map in accordance with 76-25-201, the land use plan and future land use map must be reviewed by the planning commission every fifth year after adoption to determine whether an update to the land use plan and future land use map must be performed. The planning commission shall:

(a) make a preliminary determination regarding the existence of new or increased impacts to or from local facilities, services, natural resources, natural environment, or natural hazards from those previously described and analyzed when the land use plan and future land use map were previously adopted;

(b) provide public notice and participation in accordance with 76-25-106; and

(c) accept, consider, and respond to public comment on the review of the land use plan and future land use map. All public comment must be part of the administrative record transmitted to the governing body.

(2) (a) If the planning commission finds new or increased impacts under subsection (1), the planning commission shall recommend an update to the land use plan, future land use map, or both.

(b) If the planning commission finds no new or increased impacts under subsection (1), the planning commission shall make a recommendation to the governing body that no update to the land use plan or future land use map is necessary.

(3) After receiving the recommendation of the planning commission, the governing body may direct that an update of the land use plan, future land use map, or both be completed or may readopt the current land use plan, future land use map, or both.

(4) (a) In developing, drafting, and considering an update to the land use plan or future land use map, the planning commission shall follow the process set forth in 76-25-201 with respect to the changes proposed to the land use plan or future land use map.

(b) If the planning commission finds new or increased impacts resulting from the land use plan or future land use map, the local government shall collect additional data and conduct additional analysis necessary to provide the governing body and the public with the opportunity to comment on and consider all potential impacts resulting from an update to the land use plan or future land use map.

(5) At any time before an update is required after a review under subsection (1), the local governing body may direct that an update to the land use plan or future land use map be prepared for consideration by the planning commission and for recommendation to the governing body.

(6) Once an update to the land use plan or future land use map is adopted or the land use plan or future land use map is readopted, the information and analysis contained within the land use plan and future land use map must be considered accurate for the purposes of making site-specific development decisions in substantial compliance with the land use plan and future land use map.

History: En. Sec. 8, Ch. 500, L. 2023.

76-25-203. Existing conditions and population projections. (1) The land use plan must include, at a minimum, inventories and descriptions of existing conditions of housing, local services and facilities, economic development, natural resources, environment, and hazards, and land use within the jurisdictional boundaries of the land use plan.

(2) As set forth in 76-25-206 through 76-25-209 and 76-25-213 through 76-25-216, the land use plan must include, at minimum, a description, map, and analysis of how the jurisdiction will accommodate its projected population over the next 20 years and the expected impacts of the development in the areas of housing, local services and facilities, economic development, natural resources, environment, and hazards.

(3) The inventories and descriptions in the plan must be based on up-to-date surveys, maps, diagrams, charts, descriptive material, studies, and reports necessary to explain and supplement the analysis of each section of the land use plan.

(4) (a) A jurisdiction shall use demographics provided by:

(i) the most recent decennial census or census estimate of the United States census bureau; and

(ii) population projections for a 20-year period based on permanent and seasonal population estimates:

(A) provided by demographics published by the department of commerce;

(B) generated by the local government; or

(C) produced by a professional firm specializing in projections.

(b) When a population projection is not available, population projections for the jurisdiction must be reflective of the area's proportional share of the total county population and the total county population growth.

History: En. Sec. 9, Ch. 500, L. 2023.

76-25-204 and 76-25-205 reserved.

76-25-206. Housing. (1) A local governing body shall identify and analyze existing and projected housing needs for the projected population of the jurisdiction and provide regulations that allow for the rehabilitation, improvement, or development of the number of housing units needed, as identified in the land use plan and future land use map, including:

(a) a quantification of the jurisdiction's existing and projected needed housing types, including location, age, condition, and occupancy required to accommodate existing and estimated population projections;

(b) an inventory of sites, including zoned, unzoned, vacant, underutilized, and potential redevelopment sites, available to meet the jurisdiction's needed housing types;

(c) an analysis of any constraints to housing development, such as zoning, development standards, and infrastructure needs and capacity, and the identification of market-based incentives that may affect or encourage the development of needed housing types; and

(d) a detailed description of what actions the jurisdiction may take to accommodate the projected needed housing types identified in subsection (1)(a).

(2) The housing section of the land use plan and future land use map may incorporate by reference any information or policies identified in other housing needs assessments adopted by the governing body.

(3) If, after performing the analysis required in subsection (1), the local government determines that the total needed housing types may not be met due to lack of resources, development sites, infrastructure capacity, or other documented constraints, the local government shall establish the minimum number of housing units that may be rehabilitated, improved, or developed within the jurisdiction over the 20-year planning period and the actions the local government may take to remove constraints to the development of those units over that period.

(4) Progress toward the construction of the housing units identified as needed to meet projected housing needs during the 20-year planning period of the land use plan must be documented at each fifth year review of the land use plan as required in 76-25-202.

(5) The amount of detail provided in the analysis beyond the minimum criteria established in this section is at the discretion of the local governing body.

History: En. Sec. 10, Ch. 500, L. 2023.

76-25-207. Local services and facilities. (1) The land use plan must:

(a) determine the existing and anticipated levels of public safety and emergency services necessary to serve the projected population of the jurisdiction, including law enforcement, fire protection, emergency management system agencies, and local health care organizations;

(b) contain an inventory and map of existing fire protection, law enforcement, and emergency service jurisdictional areas and anticipated response times, a description of mutual aid or cooperative service agreements, and the location of hospitals or clinics in the jurisdiction;

(c) identify capital and service improvements for fire, law enforcement, emergency services, and health services for the jurisdictional area necessary to meet the projected population;

(d) determine the existing capacity, existing deficiencies, planned expansion, and anticipated levels of utility services necessary to serve the projected population in the jurisdiction, including water, wastewater, and storm water systems, solid waste disposal, and other utility services, as identified by the local government;

(e) contain an inventory and map of all utility service areas, system networks, and facilities;

(f) identify local utility capital and service improvements for the jurisdictional area necessary to meet the projected population;

(g) determine the existing capacity, existing deficiencies, planned expansion, and anticipated improvements to the transportation network serving the jurisdictional area necessary to serve the projected population in the jurisdiction;

(h) contain an inventory and classification map of all existing and planned roads within the jurisdictional area, including major highways, secondary highways, and local routes, all non-motorized routes, including bike lanes and pedestrian thoroughfares, and all public transit systems and facilities; and

(i) identify planned capital and service transportation improvements necessary to serve the projected population.

(2) The local government shall:

(a) coordinate with school districts within the jurisdiction to determine the existing capacity of, planned expansion of, and anticipated improvements necessary for the local K-12 school system to serve the projected population in the jurisdiction; and

(b) request that the local school district provide any inventory and maps of existing K-12 educational facilities within the jurisdictional area and identify any capital and service improvements necessary to meet the projected population.

(3) The local government may include an analysis of existing capacity and service levels, planned expansions of, and anticipated improvements necessary to provide other services to the projected population in the jurisdiction.

(4) The local government may incorporate by reference any information or policies identified in other relevant local services or facilities assessments adopted by the local governing body, such as a capital improvements plan or an impact fee study.

(5) The amount of detail provided in the analysis beyond the minimum criteria established in this section is at the discretion of the local governing body.

History: En. Sec. 11, Ch. 500, L. 2023.

76-25-208. Economic development. (1) The land use plan must:

(a) assess existing and potential commercial, industrial, small business, and institutional enterprises in the jurisdiction, including the types of sites and supporting services needed by the enterprises;

(b) summarize job composition and trends by industry sector, including existing labor force characteristics and future labor force requirements, for existing and potential enterprises in the jurisdiction;

(c) assess the extent to which local characteristics, assets, and resources support or constrain existing and potential enterprises, including access to transportation to market goods and services, and assess historic, cultural, and scenic resources and their relationship to private sector success in the jurisdiction;

(d) inventory sites within the jurisdiction, including zoned, unzoned, vacant, underutilized, and potentially redeveloped sites, available to meet the jurisdiction's economic development needs;

(e) assess the adequacy of existing and projected local facilities and services, schools, housing stock, and other land uses necessary to support existing and potential commercial, industrial, and institutional enterprises; and

(f) assess the financial feasibility of supporting anticipated economic growth in the jurisdiction.

(2) The local government may incorporate by reference any information or policies identified in other relevant economic development assessments.

(3) The amount of detail provided in the analysis beyond the minimum criteria established in this section is at the discretion of the local governing body.

History: En. Sec. 12, Ch. 500, L. 2023.

76-25-209. Natural resources, environment, and hazards. (1) The land use plan must:

(a) include inventories and maps of natural resources within the jurisdiction, including but not limited to agricultural lands, agricultural water user facilities, minerals, sand and gravel resources, forestry lands, and other natural resources identified by the local government;

(b) describe the natural resource characteristics of the jurisdictional area, including a summary of historical natural resource utilization, data on existing utilization, and projected future trends;

(c) include an inventory, maps, and description of the natural environment of the jurisdictional area, including a summary of important natural features and the conditions of and real and potential threats to soils, geology, topography, vegetation, surface water, groundwater, aquifers, floodplains, scenic resources, wildlife, wildlife habitat, wildlife corridors, and wildlife nesting sites within the jurisdiction; and

(d) include maps of, identify factors related to, and describe natural hazards within the jurisdictional area, including flooding, fire, earthquakes, steep slopes and other known geologic hazards and other natural hazards identified by the jurisdiction, with a summary of past significant events resulting from natural hazards that includes:

(i) a description of land use constraints resulting from natural hazards;

(ii) a description of the efforts that have been taken within the local jurisdiction to mitigate the impact of natural hazards; and

(iii) a description of the role that natural resources and the environment play in the local economy.

(2) The local government may incorporate by reference any information or policies identified in other relevant assessments of natural resources, environment, or hazards.

(3) The amount of detail provided in the analysis beyond the minimum criteria established in this section is at the discretion of the local governing body.

History: En. Sec. 13, Ch. 500, L. 2023.

76-25-210 through 76-25-212 reserved.

76-25-213. Land use and future land use map. (1) A land use plan must include a future land use map and a written description of the proposed general distribution, location, and extent of residential, commercial, mixed, industrial, agricultural, recreational, and conservation uses of land and other categories of public and private uses, as determined by the local government.

(2) The future land use map must reflect the anticipated and preferred pattern and intensities of development for the jurisdiction over the next 20 years, based on the information, analysis, and public input collected, considered, and relevant to the population projections for and economic development of the jurisdiction and the housing and local services needed to accommodate those projections, while acknowledging and addressing the natural resource, environment, and natural hazards of the jurisdiction.

(3) The future land use map may not confer any authority to regulate what is not otherwise specifically authorized in this chapter.

(4) The future land use map and the written description must include:

(a) a statement of intent describing the jurisdiction's applicable zoning, subdivision, and other land use regulations;

(b) descriptions of existing and future land uses, including:

(i) categories of public and private use;

(ii) general descriptions of use types and densities of those uses;

(iii) general descriptions of population; and

(iv) other aspects of the built environment;

(c) geographic distribution of future land uses in the jurisdiction, anticipated over a 20-year planning period that specifically demonstrate:

(i) adequate land to support the projected population in all land use types in areas where local services can be adequately and cost-effectively provided for that population;

(ii) adequate sites to accommodate the type and supply of housing needed for the projected population; and

(iii) areas of the jurisdiction that are not generally suitable for development and the reason, based on the constraints identified through the land use plan analysis;

(d) a statement acknowledging areas within the jurisdiction known to be subject to covenants, codes, and restrictions that may limit the type, density, or intensity of housing development projected in the future land use map; and

(e) areas of or adjacent to the jurisdiction subject to increased growth pressures, higher development densities, or other urban development influences.

(5) To the greatest extent possible, local governments shall create compatibility in the land use plans and future land use map in those areas identified in subsection (4)(e).

(6) The land use plan may:

(a) provide information required by a federal land management agency for the local governing body to establish or maintain coordination or cooperating agency status; and

(b) incorporate by reference any information or policies identified in other relevant assessments adopted by the local governing body, such as a pre-disaster mitigation plan or wildfire protection plan.

(7) The amount of detail provided in the analysis beyond the minimum criteria established in this section is at the discretion of the local governing body.

History: En. Sec. 14, Ch. 500, L. 2023.

76-25-214. Area plans. (1) A local governing body may adopt area plans for a portion of the jurisdiction to provide a more localized analysis of all or any part of a land use plan. An area plan may include but is not limited to a neighborhood plan, a corridor plan, or a subarea plan.

(2) The adoption, amendment, or update of an area plan must follow the same process as a land use plan provided for in this part and may be adopted as an amendment to the land use plan.

(3) The area plan must be in substantial compliance with the land use plan. To the extent an area plan is inconsistent with the land use plan, the land use plan controls.

History: En. Sec. 15, Ch. 500, L. 2023.

76-25-215. Issue plans. (1) A local governing body may adopt issue plans for all or part of a jurisdiction that provide a more detailed or thorough analysis for any component of the land use plan.

(2) The adoption, amendment, or update of an issue plan must follow the same process as a land use plan provided for in this part.

(3) If an issue plan covers the jurisdictional area of the land use plan, the issue plan may serve as the detailed analysis required in the land use plan.

History: En. Sec. 16, Ch. 500, L. 2023.

76-25-216. Implementation. (1) The land use plan and future land use map is not a regulatory document and must include an implementation section that:

(a) establishes meaningful and predictable implementation measures for the use and development of land within the jurisdiction based on the contents of the land use plan and future land use map;

(b) provides meaningful direction for the content of more detailed land use regulations and future land use maps; and

(c) requires identification of those programs, activities, actions, or land use regulations that may be part of the overall strategy of the jurisdiction for implementing the land use plan.

(2) The implementation section of the land use plan must include:

(a) if the local jurisdiction does not have current zoning regulations, a schedule by which zoning regulations and a zoning map will be adopted in accordance with the deadlines set forth in 76-25-105;

(b) if the local jurisdiction has current zoning regulations, an analysis of whether any inconsistencies exist between current zoning regulations and the land use plan and future land use map, including a map of the inconsistencies. If inconsistencies exist, the local government shall identify:

(i) specific implementation actions necessary to amend the zoning regulations and the zoning map to bring the zoning regulations and zoning map into substantial compliance with the land use plan and future land use map;

(ii) a schedule for amending the zoning regulations and zoning map to be in substantial compliance with the land use plan and future land use map, in accordance with the deadlines set forth in 76-25-105;

(iii) a schedule for adopting a capital improvements program or for amending an existing capital improvements program to be in substantial compliance with the land use plan and future land use map;

(iv) a schedule for expanding or replacing public facilities and the anticipated costs and revenue sources proposed to meet those costs, which must be reflected in a jurisdiction's capital improvement program;

(v) if applicable, a schedule for updating the plan for extension of services required in 7-2-4732 to be in substantial compliance with the land use plan; and

(vi) a schedule for implementing any other specific actions necessary to achieve the components of the land use plan, including a timeframe or prioritization of each specific public action; and

(c) procedures for monitoring and evaluating the local government's progress toward meeting the implementation schedule.

History: En. Sec. 17, Ch. 500, L. 2023.

Part 3
Zoning

76-25-301. Authority to adopt local zoning regulations. (1) (a) A local government subject to this chapter, within its respective jurisdiction, has the authority to and shall regulate the use of land in substantial compliance with its adopted land use plan by adopting zoning regulations.

(b) The governing body of a county or city has the authority to adopt zoning regulations in accordance with this part by an ordinance that substantially complies with 7-5-103 through 7-5-107.

(c) (i) A municipality shall adopt zoning regulations for the portions of the jurisdictional area outside of the boundaries of the municipality that the governing body anticipates may be annexed into the municipality over the next 20 years.

(ii) Unless otherwise agreed to by the applicable jurisdictions, zoning regulations on property outside the municipal boundaries may not apply or be enforced until those areas are annexed or are being annexed into the municipality.

(iii) A municipality subject to this chapter may continue to apply, administer, and enforce extraterritorial zoning regulations pursuant to the provisions of 76-2-310 and 76-2-311.

(2) Local zoning regulations authorized in subsection (1) include but are not limited to ordinances prescribing the:

(a) uses of land;

(b) density of uses;

(c) types of uses;

(d) size, character, number, form, and mass of structures; and

(e) development standards mitigating the impacts of development, as identified and analyzed during the land use planning process and review and adoption of zoning regulations pursuant to this chapter.

(3) The local government shall incorporate any existing zoning regulations adopted pursuant to Title 76, chapter 2, into the zoning regulations meeting the requirements of this chapter.

(4) The local government shall adopt a zoning map for the jurisdiction in substantial compliance with the land use plan and future land use map and the zoning regulations adopted pursuant to this section, graphically illustrating the zone or zones that a property within the jurisdiction is subject to.

(5) The local government may provide for the issuance of permits as may be necessary for the implementation of this chapter.

(6) (a) The zoning regulations and map must identify areas that may necessitate the denial of a development or a specific type of development, such as unmitigable natural hazards,

insufficient water supply, inadequate drainage, lack of access, inadequate public services, or the excessive expenditure of public funds for the supply of the services.

(b) The regulations must prohibit development in the areas identified in subsection (6)(a) unless the hazards or impacts may be eliminated or overcome by approved construction techniques or other mitigation measures identified in the zoning regulations.

(c) Approved construction techniques or other mitigation measures described in subsection (6)(b) may not include building regulations as defined in 50-60-101 other than those identified by the department of labor and industry as provided in 50-60-901.

(7) The zoning regulations and map must mitigate the hazards created by development in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body. If the hazards cannot be mitigated, the zoning regulations and map must identify those areas where future development is limited or prohibited.

(8) (a) The zoning regulations must allow for the continued use of land or buildings legal at the time that any zoning regulation, map, or amendment of these is adopted, but the local government may provide grounds for discontinuing nonconforming uses based on changes to or abandonment of the use of the land or buildings after the adoption of a zoning regulation, map, or amendment.

(b) Any ambiguity or uncertainty in the zoning regulations as to whether a nonconforming use is allowed or whether the use was allowed when it was commenced must be interpreted in favor of the nonconforming use.

(9) In interpreting a use and in determining whether a use violates this chapter or a resolution adopted under this chapter, any ambiguity or uncertainty in the zoning regulations as to whether the use is in violation must be interpreted in favor of the use in question.

History: En. Sec. 18, Ch. 500, L. 2023; amd. Sec. 8, Ch. 369, L. 2025; amd. Sec. 10, Ch. 555, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 8, Ch. 369, L. 2025. Amendment effective May 5, 2025.

See 2025 Session Law for amendment made by sec. 10, Ch. 555, L. 2025. Amendment effective May 8, 2025.

76-25-302. Encouragement of development of housing. (1) The zoning regulations authorized in 76-25-301 must include a minimum of five of the following housing strategies, applicable to the majority of the area, where residential development is permitted in the jurisdictional area:

(a) allow, as a permitted use, for at least a duplex where a single-unit dwelling is permitted;

(b) zone for higher density housing near transit stations, places of employment, higher education facilities, and other appropriate population centers, as determined by the local government;

(c) eliminate or reduce off-street parking requirements to require no more than one parking space per dwelling unit;

(d) eliminate impact fees for accessory dwelling units or developments that include multi-unit dwellings or reduce the fees by at least 25%;

(e) allow, as a permitted use, for at least one internal or detached accessory dwelling unit on a lot with a single-unit dwelling occupied as a primary residence;

(f) allow for single-room occupancy developments;

(g) allow, as a permitted use, a triplex or fourplex where a single-unit dwelling is permitted;

(h) eliminate minimum lot sizes or reduce the existing minimum lot size required by at least 25%;

(i) eliminate aesthetic, material, shape, bulk, size, floor area, and other massing requirements for multi-unit dwellings or mixed-use developments or remove at least half of those requirements;

(j) provide for zoning that specifically allows or encourages the development of tiny houses, as defined in Appendix Q of the International Residential Code as it was printed on January 1, 2023;

(k) eliminate setback requirements or reduce existing setback requirements by at least 25%;

(l) increase building height limits for dwelling units by at least 25%;

(m) allow multi-unit dwellings or mixed-use development as a permitted use on all lots where office, retail, or commercial are primary permitted uses; or

(n) allow multi-unit dwellings as a permitted use on all lots where triplexes or fourplexes are permitted uses.

(2) If a local government's existing zoning ordinance adopted pursuant to Title 76, chapter 2, before May 17, 2023, does not contain a zoning regulation that is listed as a regulation to be eliminated or reduced in subsection (1), that strategy is considered adopted by the local government.

(3) If the adoption of a housing strategy allowed in subsection (1) subsumes another housing strategy allowed in subsection (1), only one strategy may be considered to have been adopted by the local government.

History: En. Sec. 19, Ch. 500, L. 2023.

76-25-303. *(Temporary)* **Limitations on zoning authority.** (1) A local government acting pursuant to this part may not:

(a) treat manufactured housing or factory-built housing units differently from any other residential units;

(b) include in a zoning regulation any requirement to:

(i) pay a fee for the purpose of providing housing for specified income levels or at specified sale prices; or

(ii) dedicate real property for the purpose of providing housing for specified income levels or at specified sale prices, including a payment or other contribution to a local housing authority or the reservation of real property for future development of housing for specified income levels or specified sale prices;

(c) prevent the erection of an amateur radio antenna at heights and dimensions sufficient to accommodate amateur radio service communications by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(d) establish a maximum height limit for an amateur radio antenna of less than 100 feet above the ground;

(e) subject to subsection (2) and outside of incorporated municipalities, prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources identified in the land use plan, except that the use, development, or recovery may be reasonably conditioned or prohibited within residential zones;

(f) except as provided in subsection (3), treat the following differently from any other residential use of property:

(i) a foster home, kinship foster home, youth shelter care facility, or youth group home operated under the provisions of 52-2-621 through 52-2-623, if the home or facility provides care on a 24-hour-a-day basis;

(ii) a community residential facility serving eight or fewer persons, if the facility provides care on a 24-hour-a-day basis; or

(iii) a family day-care home or a group day-care home registered by the department of public health and human services under Title 52, chapter 2, part 7;

(g) except as provided in subsection (3), apply any safety or sanitary regulation of the department of public health and human services or any other agency of the state or a political subdivision of the state that is not applicable to residential occupancies in general to a community residential facility serving 8 or fewer persons or to a day-care home serving 12 or fewer children; or

(h) prohibit any existing agricultural activities or force the termination of any existing agricultural activities outside the boundaries of an incorporated city, including agricultural activities that were established outside the corporate limits of a municipality and thereafter annexed into the municipality.

(2) Regulations that condition or prohibit uses pursuant to subsection (1)(e) must be in effect prior to the filing of a permit application or at the time a written request is received for a preapplication meeting pursuant to 82-4-432.

(3) Except for a day-care home registered by the department of public health and human services, a local government may impose zoning standards and conditions on any type of home

or facility identified in subsections (1)(f) and (1)(g) if those zoning standards and conditions do not conflict with the requirements of subsections (1)(f) and (1)(g).

76-25-303. *(Effective October 1, 2026)* **Limitations on zoning authority.** (1) A local government acting pursuant to this part may not:

(a) treat manufactured housing or factory-built housing units differently from any other residential units;

(b) include in a zoning regulation any requirement to:

(i) pay a fee for the purpose of providing housing for specified income levels or at specified sale prices; or

(ii) dedicate real property for the purpose of providing housing for specified income levels or at specified sale prices, including a payment or other contribution to a local housing authority or the reservation of real property for future development of housing for specified income levels or specified sale prices;

(c) prevent the erection of an amateur radio antenna at heights and dimensions sufficient to accommodate amateur radio service communications by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(d) establish a maximum height limit for an amateur radio antenna of less than 100 feet above the ground;

(e) subject to subsection (2) and outside of incorporated municipalities, prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources identified in the land use plan, except that the use, development, or recovery may be reasonably conditioned or prohibited within residential zones;

(f) except as provided in subsection (3), treat the following differently from any other residential use of property:

(i) a foster home, kinship foster home, youth shelter care facility, or youth group home operated under the provisions of 52-2-621 through 52-2-623, if the home or facility provides care on a 24-hour-a-day basis;

(ii) a community residential facility serving eight or fewer persons, if the facility provides care on a 24-hour-a-day basis; or

(iii) a family day-care home or a group day-care home registered by the department of public health and human services under Title 52, chapter 2, part 7;

(g) except as provided in subsection (3), apply any safety or sanitary regulation of the department of public health and human services or any other agency of the state or a political subdivision of the state that is not applicable to residential occupancies in general to a community residential facility serving 8 or fewer persons or to a day-care home serving 12 or fewer children;

(h) prohibit any existing agricultural activities or force the termination of any existing agricultural activities outside the boundaries of an incorporated city, including agricultural activities that were established outside the corporate limits of a municipality and thereafter annexed into the municipality;

(i) enact a height restriction that would violate 76-2-304(4)(b)(iii); or

(j) except to provide accessible parking spaces as required by the Americans With Disabilities Act of 1990, 42 U.S.C. 12101, et seq., require:

(i) more than one parking space for each residential dwelling unit; or

(ii) any minimum parking requirement for:

(A) existing buildings, including vacant buildings, undergoing a change of use;

(B) child-care facilities licensed or registered by the department of public health and human services;

(C) residential units under 1,200 square feet;

(D) deed-restricted affordable housing; or

(E) assisted living facilities.

(2) Regulations that condition or prohibit uses pursuant to subsection (1)(e) must be in effect prior to the filing of a permit application or at the time a written request is received for a preapplication meeting pursuant to 82-4-432.

(3) Except for a day-care home registered by the department of public health and human services, a local government may impose zoning standards and conditions on any type of home

or facility identified in subsections (1)(f) and (1)(g) if those zoning standards and conditions do not conflict with the requirements of subsections (1)(f) and (1)(g).

(4) Nothing in this part restricts a property owner, developer, or builder from providing more parking spaces than the minimum number of parking spaces required in zoning regulations adopted under this part.

History: En. Sec. 20, Ch. 500, L. 2023; amd. Sec. 5, Ch. 376, L. 2025; amd. Sec. 2, Ch. 591, L. 2025; amd. Sec. 2, Ch. 682, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 5, Ch. 376, L. 2025. Amendment effective October 1, 2025.

See 2025 Session Law for amendment made by sec. 2, Ch. 591, L. 2025. Amendment effective October 1, 2026.

See 2025 Session Law for amendment made by sec. 2, Ch. 682, L. 2025. Amendment effective October 1, 2026.

76-25-304. Adoption and amendment of zoning regulations. (1) (a) The governing body shall adopt or amend a zoning regulation or map only after consideration by and on the recommendation of the planning commission.

(b) An amendment to an adopted zoning regulation or map may be initiated:

(i) by majority vote of the governing body;

(ii) on petition of at least 15% of the electors of the local government jurisdiction to which the regulations apply, as registered at the last general election; or

(iii) by a property owner, as related to an application for any zoning, subdivision, or other land use permit or approval.

(2) Prior to making a recommendation to the governing body to adopt or amend a zoning regulation or map, the planning commission shall:

(a) provide public notice and participation in accordance with 76-25-106;

(b) accept, consider, and respond to public comment on the proposed zoning regulation, map, or amendment. All public comment must be part of the administrative record transmitted to the governing body.

(c) make a preliminary determination as to whether the zoning regulation and map as proposed or as amended would be in substantial compliance with the land use plan, including whether the zoning regulation or map:

(i) accommodates the projected needed housing types identified in 76-25-206;

(ii) contains five or more specific strategies from 76-25-302 to encourage the development of housing within the jurisdiction;

(iii) reflects allowable uses and densities in areas that may be adequately served by public safety, emergency, utility, transportation, education, and any other local facilities or services identified by the local government in 76-25-207;

(iv) allows sufficient area for existing, new, or expanding commercial, industrial, and institutional enterprises the local government has identified in 76-25-208 for targeted economic growth in the jurisdiction;

(v) protects and maximizes the potential use of natural resources within the area, as identified in 76-25-209;

(vi) minimizes or avoids impacts to the natural environment within the area, as identified in 76-25-209; and

(vii) avoids or minimizes dangers associated with natural hazards in the jurisdiction, as identified in 76-25-209; and

(d) preliminarily determine whether the proposed zoning regulation, map, or amendment results in new or increased impacts to or from local facilities, services, natural resources, natural environment, or natural hazards from those previously described and analyzed in the assessment conducted for the land use plan.

(3) If the planning commission finds new or increased impacts from the proposed regulation, map, or amendment, as provided in subsection (2)(d), the local government shall collect additional data and conduct additional analysis necessary to provide the planning commission and the public with the opportunity to comment on and consider all potential impacts resulting from adoption of the zoning regulation, map, or amendment.

(4) After meeting the requirements of subsections (2) and (3), the planning commission shall make a final recommendation to the governing body to approve, modify, or reject the proposed zoning regulation, map, or amendment.

(5) (a) The governing body shall consider each zoning regulation, map, or amendment that the planning commission recommends to the governing body.

(b) After providing public notice and participation in accordance with 76-25-106, the governing body may adopt, adopt with revisions the governing body considers appropriate, or reject the zoning regulation, map, or amendment as proposed by the planning commission.

(c) The governing body may not condition an amendment to a zoning regulation or map.

(d) The governing body may not adopt or amend a zoning regulation or map unless the governing body finds that:

(i) the regulation, map, or amendment is in substantial compliance with the land use plan; and

(ii) the impacts resulting from development in substantial compliance with the proposed zoning regulation, map, or amendment have been made available for public review and comment and have been fully considered by the governing body.

(6) After the zoning regulation, map, or amendment has been adopted by the governing body, there is a presumption that:

(a) all permitting in substantial compliance with the zoning regulation, map, or amendment is in substantial compliance with the land use plan; and

(b) the public has been provided a meaningful opportunity to participate.

History: En. Sec. 21, Ch. 500, L. 2023.

76-25-305. *(Temporary)* **Effect on zoning regulations and map.** (1) After the adoption of a zoning regulation, map, or amendment pursuant to 76-25-304, any application proposing development of a site is subject to the process set forth in this section.

(2) (a) When a proposed development lies entirely within an incorporated city, or is proposed for annexation into the city, the application must be submitted to and approved by the city.

(b) Except as provided in subsections (2)(a) or (2)(c), when a proposed development lies entirely in an unincorporated area, the application must be submitted to and approved by the county.

(c) If a proposed development lies within an area subject to increased growth pressures, higher development densities, or other urban development influences identified by either jurisdiction in 76-25-213, the jurisdiction shall provide other impacted jurisdictions the opportunity to review and comment on the application.

(d) If the proposed development lies partly within an incorporated city, the application and materials must be submitted to and approved by both the city and the county governing bodies.

(3) After accepting a complete application proposing development of a site, the planning administrator shall make an initial determination of whether:

(a) a proposed development, with or without variances or deviations from adopted standards, is in substantial compliance with the zoning regulations or map; and

(b) all impacts resulting from the proposed development were previously analyzed and made available for public review and comment in the adoption, amendment, or update of the land use plan, zoning regulation, or zoning map.

(4) (a) If the planning administrator makes an initial determination that the proposed development, with or without variances or deviations from adopted standards, meets the requirements of subsections (3)(a) and (3)(b), the planning administrator shall provide public notice of the initial determination in accordance with 76-25-106(3)(a) and (3)(b) and a 15-business-day written public comment period during which the public must have an opportunity to comment on the initial determination.

(b) Unless public comment received on or before the last day of the comment period provided in subsection (4)(a) supports a determination that the proposed development fails to meet the requirements of subsections (3)(a) and (3)(b), the planning administrator shall issue written findings stating the results of the public comment and a final written decision approving, approving with conditions, or denying the application, which may be appealed as provided in 76-25-503.

(c) If public comment received on or before the last day of the comment period provided in subsection (4)(a) provides evidence that the proposed development fails to meet either one or

both of the requirements of subsection (3)(a) or (3)(b), the planning administrator shall proceed with further review of the application as set forth in subsection (5).

(5) If the planning administrator makes an initial determination or public comment received under subsection (4)(c) provides evidence that the proposed development, with or without variances or deviations from adopted standards, fails to meet either one or both of the requirements of subsection (3)(a) or (3)(b), the planning administrator shall proceed as follows:

(a) request that the applicant collect any additional data and perform any additional analysis necessary to provide the planning administrator and the public with the opportunity to comment on and consider the lack of substantial compliance with the zoning regulations or zoning map and any new or significantly increased potential impacts not previously identified and considered in the adoption, amendment, or update of the land use plan, zoning regulations, or zoning map;

(b) collect any additional data or perform additional analysis the planning administrator determines is necessary to provide the local government and the public with the opportunity to comment on and consider the lack of substantial compliance with the zoning regulations or zoning map and any new or significantly increased potential impacts not previously identified and considered in the adoption, amendment, or update of the land use plan, zoning regulations, or zoning map; and

(c) provide public notice of the planning administrator's initial or revised initial determination in accordance with 76-25-106(3)(a) and (3)(b) and a 15-business-day written comment period during which the public must have the opportunity to participate and comment on the data collected and analysis performed pursuant to subsections (5)(a) and (5)(b).

(6) Any additional data, analysis, comment, or consideration described in subsection (5) must be limited to the lack of substantial compliance with the zoning regulations or map and any new or significantly increased impacts potentially resulting from the proposed development, to the extent the impact was not previously identified or considered in the adoption, amendment, or update of the land use plan, zoning regulations, or zoning map.

(7) After the public comment period provided in subsection (5) has ended, the planning administrator shall issue written findings stating the results of the public comment and a final written decision approving, approving with conditions, or denying the application, which may be appealed as provided in 76-25-503.

(8) If an applicant proposes to develop a site in a manner or to an extent that the development is not in substantial compliance with the zoning regulations or map, the applicant may propose an amendment to the regulations or map and follow the process provided for in 76-25-304.

(9) Ministerial permits may be issued by the planning administrator without any discretionary review or analysis and may be appealed as provided in 76-25-503. *(Terminates June 30, 2027—sec. 16, Ch. 555, L. 2025.)*

76-25-305. *(Effective July 1, 2027)* **Effect on zoning regulations and map.** (1) After the adoption of a zoning regulation, map, or amendment pursuant to 76-25-304, any application proposing development of a site is subject to the process set forth in this section.

(2) (a) When a proposed development lies entirely within an incorporated city, or is proposed for annexation into the city, the application must be submitted to and approved by the city.

(b) Except as provided in subsections (2)(a) or (2)(c), when a proposed development lies entirely in an unincorporated area, the application must be submitted to and approved by the county.

(c) If a proposed development lies within an area subject to increased growth pressures, higher development densities, or other urban development influences identified by either jurisdiction in 76-25-213, the jurisdiction shall provide other impacted jurisdictions the opportunity to review and comment on the application.

(d) If the proposed development lies partly within an incorporated city, the application and materials must be submitted to and approved by both the city and the county governing bodies.

(3) Zoning compliance permits and other ministerial permits may be issued by the planning administrator or the planning administrator's designee without any further review or analysis by the governing body, except as provided in 76-25-503.

(4) If a proposed development, with or without variances or deviations from adopted standards, is in substantial compliance with the zoning regulations or map and all impacts resulting from the development were previously analyzed and made available for public review and comment prior to the adoption of the land use plan, zoning regulation, map, or amendment thereto, the application must be approved, approved with conditions, or denied by the planning administrator and is not subject to any further public review or comment, except as provided in 76-25-503.

(5) (a) If a proposed development, with or without variances or deviations from adopted standards, is in substantial compliance with the zoning regulations and map but may result in new or significantly increased potential impacts that have not been previously identified and considered in the adoption of the land use plan or zoning regulations, the planning administrator shall proceed as follows:

(b) request that the applicant collect any additional data and perform any additional analysis necessary to provide the planning administrator and the public with the opportunity to comment on and consider the impacts identified in subsection (5)(a);

(c) collect any additional data or perform additional analysis the planning administrator determines is necessary to provide the local government and the public with the opportunity to comment on and consider the impacts identified in subsection (5)(a); and

(d) provide notice of a 15-business day written comment period during which the public has the reasonable opportunity to participate in the consideration of the impacts identified in subsection (5)(a).

(6) (a) Any additional analysis or public comment on a proposed development described in subsection (5) must be limited to only any new or significantly increased impacts potentially resulting from the proposed development, to the extent the impact was not previously identified or considered in the adoption or amendment of the land use plan or zoning regulations.

(b) The planning administrator shall approve, approve with conditions, or deny the application. The planning administrator's decision is final and no further action may be taken except as provided in 76-25-503.

(7) If an applicant proposes to develop a site in a manner or to an extent that the development is not in substantial compliance with the zoning regulations or map, the applicant shall propose an amendment to the regulations or map and follow the process provided for in 76-25-304.

History: En. Sec. 22, Ch. 500, L. 2023; amd. Sec. 11, Ch. 555, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 11, Ch. 555, L. 2025. Amendment effective May 8, 2025, and terminates June 30, 2027.

76-25-306. Zoning and annexation. (1) A municipality shall review and consider a proposed annexation in conjunction with the zoning regulations for the property to be annexed adopted pursuant to 76-25-301(1)(c) following the procedures set forth in 76-25-305.

(2) The joint public process authorized in subsection (1) fulfills the notice and public hearing requirements for a proposed annexation required in Title 7, chapter 2, parts 42 through 47.

History: En. Sec. 23, Ch. 500, L. 2023.

76-25-307. Interim zoning ordinances. (1) A local government, to protect the public safety, health, and welfare and without following the procedures otherwise required prior to adopting a zoning regulation, may adopt an interim zoning ordinance as an urgency measure to regulate or prohibit uses that may conflict with a zoning proposal that the governing body is considering or studying or intends to study within a reasonable time.

(2) Before adopting an interim zoning ordinance, the governing body shall first hold a public hearing upon notice reasonably designed to inform all affected parties. A notice must be published as provided in 7-1-4127.

(3) An interim zoning ordinance takes effect immediately on passage and approval after first reading and may be in effect no longer than 1 year from the date of its adoption.

(4) A local government may not act under the authority provided for in this section until the local government has adopted a land use plan and zoning regulations pursuant to this chapter.

History: En. Sec. 24, Ch. 500, L. 2023; amd. Sec. 15, Ch. 272, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 15, Ch. 272, L. 2025. Amendment effective October 1, 2025.

Part 4
Subdivision Regulations

76-25-401. Authority to adopt local subdivision regulations — limitations. (1) (a) Within its respective jurisdiction, a local government shall regulate the creation of lots in substantial compliance with its adopted land use plan and zoning regulations by adopting subdivision regulations.

(b) The governing body of a county or city has the authority to adopt subdivision regulations in accordance with this part by an ordinance that substantially complies with 7-5-103 through 7-5-107.

(c) A municipality shall adopt subdivision regulations for those portions of the jurisdictional area outside the boundaries of the municipality that the governing body anticipates may be annexed into the municipality over the next 20 years. Unless otherwise agreed to by the applicable jurisdictions, subdivision regulations on property outside the municipal boundaries may not apply or be enforced until the areas are annexed or being annexed into the municipality.

(2) The subdivision regulations must provide a process for the application and consideration of subdivision exemptions, certificates of survey, preliminary plats, and final plats as necessary for the implementation of this chapter.

(3) (a) A local governing body may not require, as a condition for approval of a subdivision under this part:

(i) the payment of a fee for the purpose of providing housing for specified income levels or at specified sale prices; or

(ii) the dedication of real property for the purpose of providing housing for specified income levels or at specified sale prices.

(b) A dedication of real property prohibited in subsection (3)(a)(ii) includes a payment or other contribution to a local housing authority or the reservation of real property for future development of housing for specified income levels or specified sale prices.

(4) The local governing body may not change, in the subdivision regulations or in the process for subdividing, any timelines or procedural requirements for an application to subdivide other than provided for in this part.

History: En. Sec. 25, Ch. 500, L. 2023.

76-25-402. Exemptions to subdivision review. (1) The following divisions of land, if made in substantial compliance with zoning regulations adopted pursuant to Title 76, chapter 25, part 3, are not subject to the requirements of this chapter:

(a) subject to subsection (2), the creation of four or fewer new lots or parcels from an original lot or parcel:

(i) by order of a court of record in this state;

(ii) by operation of law; or

(iii) that, in the absence of agreement between the parties to a sale, could be created by court order in this state pursuant to the law of eminent domain, Title 70, chapter 30;

(b) subject to subsection (3), the creation of a lot to provide security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing, if the land that is divided is not conveyed to any entity other than the financial or lending institution to which the mortgage, lien, or trust indenture was given or to a purchaser upon foreclosure of the mortgage, lien, or trust indenture;

(c) the creation of an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;

(d) the creation of cemetery lots;

(e) the reservation of a life estate on a portion of a tract of record;

(f) the lease or rental of a portion of a tract of record for farming and agricultural purposes;

(g) the division of property over which the state does not have jurisdiction;

(h) the creation of rights-of-way or utility sites;

(i) the creation of condominiums, townhomes, townhouses, or conversions, as those terms are defined in 70-23-102, when any applicable park dedication requirements as set forth in Title 76, chapter 25, part 3, are complied with;

(j) the lease or rental of contiguous airport-related land owned by a city, a county, the state, or a municipal or regional airport authority;

(k) subject to subsection (4), a division of state-owned land, unless the division creates a second or subsequent residential parcel from a single tract for sale, rent, or lease after July 1, 1974;

(l) the creation of lots by deed, contract, lease, or other conveyance executed prior to July 1, 1974;

(m) the relocation of common boundary lines between or aggregations of adjoining properties that does not result in an increase in the number of lots;

(n) a single gift or sale in each county to each member of the landowner's immediate family; or

(o) subject to subsection (5), the creation of lots by deed, contract, lease, or other conveyance in which the landowner enters into a covenant with the governing body that runs with the land that provides that the divided land must be used exclusively for agricultural purposes.

(2) Before a court of record orders a division of land under subsection (1)(a), the court shall notify the governing body of the pending division and allow the governing body to present written comment on the division.

(3) A transfer of divided land by the owner of the property at the time that the land was divided to any party other than those identified in subsection (1)(b) subjects the division of land to the requirements of this chapter.

(4) Instruments of transfer of land that is acquired for state highways may refer by parcel and project number to state highway plans that have been recorded in compliance with 60-2-209 and are exempted from the surveying and platting requirements of this chapter. If the parcels are not shown on highway plans of record, instruments of transfer of the parcels must be accompanied by and refer to appropriate certificates of survey and plats when presented for recording.

(5) The governing body, in its discretion, may revoke the covenant provided for in subsection (1)(o) without subdivision review if the original lot lines are restored through aggregation of the covenanted land prior to or in conjunction with the revoking of the covenant.

History: En. Sec. 26, Ch. 500, L. 2023.

76-25-403. Adoption and amendment of subdivision regulations. (1) (a) The governing body shall adopt or amend subdivision regulations only after consideration by and on the recommendation of the planning commission.

(b) An amendment to adopted subdivision regulations may be initiated:

(i) by majority vote of the governing body;

(ii) on petition of at least 15% of the electors of the local government jurisdiction to which the regulations apply, as registered at the last general election; or

(iii) by a property owner, as related to an application for any zoning, subdivision, or other land use permit or approval.

(2) Prior to making a recommendation to the governing body to adopt or amend subdivision regulations, the planning commission shall:

(a) provide public notice and participation in accordance with 76-25-106;

(b) accept, consider, and respond to public comment on the proposed subdivision regulation or amendment to a subdivision regulation. All public comment must be part of the administrative record transmitted to the governing body.

(c) make a preliminary determination as to whether the subdivision regulation or amendment to a subdivision regulation is in substantial compliance with the land use plan and zoning regulations, including whether the regulation or amendment:

(i) enables the development of projected needed housing types identified in the land use plan and zoning regulations;

(ii) reflects applicable strategies from the land use plan and zoning regulations to encourage the development of housing within the jurisdiction;

(iii) facilitates the adequate provision of public safety, emergency, utility, transportation, education, and any other local facilities or services for proposed development, as identified in the land use plan and zoning regulations;

(iv) reflects standards that provide for existing, new, or expanding commercial, industrial, and institutional enterprises identified in the land use plan and zoning regulations for economic growth;

(v) protects and maximizes the potential use of natural resources within the area, as identified in the land use plan and zoning regulations;

(vi) contains standards that minimize or avoid impacts to the natural environment within the area, as identified in the land use plan and zoning regulations; and

(vii) contains standards that avoid or minimize dangers associated with natural hazards in the jurisdiction, as identified in the land use plan and zoning regulations; and

(d) preliminarily determine whether the proposed subdivision regulation or amendment to a subdivision regulation results in new or increased potential impacts to or from local facilities, services, natural resources, natural environment, or natural hazards from those previously described and analyzed in the assessments conducted for the land use plan and zoning regulations.

(3) If the planning commission finds new or increased potential impacts from the proposed regulation or amendment to a regulation pursuant to subsection (2)(d), the local government shall collect additional data and conduct additional analysis necessary to provide the planning commission and the public with the opportunity, pursuant to 76-25-106, to comment on and consider all potential impacts resulting from adoption of the subdivision regulation or amendment to a subdivision regulation.

(4) After meeting the requirements of subsection (2), the planning commission shall make a final recommendation to the governing body to approve, modify, or reject the proposed subdivision regulation or amendment to a subdivision regulation.

(5) (a) The governing body shall consider each subdivision regulation or amendment to a subdivision regulation that the planning commission recommends to the governing body.

(b) After providing public notice and participation in accordance with 76-25-106, the governing body may adopt, adopt with revisions that the governing body considers appropriate, or reject the subdivision regulation or amendment to a subdivision regulation as proposed by the planning commission.

(c) The governing body may not adopt or amend a subdivision regulation unless the governing body finds:

(i) the subdivision regulation or amendment to a subdivision regulation is in substantial compliance with the land use plan and zoning regulations; and

(ii) the impacts resulting from development in substantial compliance with the proposed subdivision regulation or amendment to a subdivision regulation have been made available for public review and comment, which have been fully considered by the governing body.

(6) After the subdivision regulation or amendment to a subdivision regulation has been adopted by the governing body, there is a presumption that:

(a) all subdivisions in substantial compliance with the adopted regulation or amendment are in substantial compliance with the land use plan and zoning regulations; and

(b) the public has been provided a meaningful opportunity to participate.

History: En. Sec. 27, Ch. 500, L. 2023.

76-25-404. Contents of local subdivision regulations. (1) The subdivision regulations adopted under this part are limited to the following requirements:

(a) the date the regulations initially become effective under this chapter and the effective dates and the ordinance numbers for all subsequent amendments;

(b) design standards for all subdivisions in the jurisdiction, which may be incorporated by reference or may be based on the information and analysis contained in the land use plan and zoning regulations, including:

(i) standards for grading and erosion control;

(ii) standards for the design and arrangement of lots, streets, and roads;

(iii) standards for the location and installation of public utilities, including water supply and sewage and solid waste disposal;

(iv) standards for the provision of other public improvements; and

(v) legal and physical access to all lots;

(c) when a subdivision creates parcels with lot sizes averaging less than 5 acres, a requirement that the subdivider:

(i) reserve all or a portion of the appropriation water rights owned by the owner of the subject property, transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water, and reserve and sever any remaining surface water rights from the land;

(ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement that is administered through a single entity and that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

(iii) reserve and sever all surface water rights from the land;

(d) except as provided in subsection (2), a requirement that the subdivider establish ditch easements that:

(i) are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;

(ii) unless otherwise provided for under a separate written agreement or filed easement, provide for the unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights;

(iii) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and

(iv) prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner;

(e) criteria that the planning administrator must use to determine whether a proposed method of disposition using the exemptions provided in this chapter is an attempt to evade the requirements of this chapter;

(f) a list of the materials that must be included in order for the application to be determined complete;

(g) subject to subsection (4), identification of circumstances or conditions that may necessitate the denial of any or specific types of development, such as unmitigable natural hazards, insufficient water supply, inadequate drainage, lack of access, inadequate public services, or the excessive expenditure of public funds for the supply of the services;

(h) subject to subsection (5), a list of public utilities and agencies of local, state, and federal government that the local government must seek input from during review of an application and for what information or analysis; or

(i) subject to subsection (6), requirements for the dedication of land, cash-in-lieu thereof, or a combination of both for parks and recreation purposes, not to exceed 0.03 acres per dwelling unit.

(2) A land donation under this section may be inside or outside of the subdivision.

(3) The regulations may not require ditch easements if:

(a) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land that the lots may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

(b) the water rights are removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and the removal or intended removal is denoted on the preliminary plat. If removal of water rights

is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

(4) (a) The regulations must prohibit development in circumstances or conditions identified in subsection (1)(g) unless the hazards or impacts may be eliminated or overcome by approved construction techniques or other mitigation measures identified in the subdivision regulations.

(b) Approved construction techniques or other mitigation measures described in subsection (4)(a) may not include building regulations as defined in 50-60-101 other than those identified by the department of labor and industry as provided in 50-60-901.

(5) If a proposed subdivision is situated within a rural school district, as described in 20-9-615, the local government shall provide a copy of the application and preliminary plat to the school district.

(6) (a) A park dedication may not be required for:

(i) land proposed for subdivision into parcels larger than 5 acres;

(ii) subdivision into parcels that are all nonresidential;

(iii) a subdivision in which parcels are not created, except when that subdivision provides multiple permanent spaces for recreational camping vehicles, mobile homes, or condominiums; or

(iv) a subdivision in which only one additional parcel is created.

(b) Subject to the approval of the local governing body and acceptance by the school district trustees, a subdivider may dedicate a land donation provided in subsection (6)(a) to a school district to be used for school facilities or buildings.

History: En. Sec. 28, Ch. 500, L. 2023.

76-25-405 through 76-25-407 reserved.

76-25-408. *(Temporary)* **Local review procedure for divisions of land.** (1) An applicant may request a preapplication submittal and response from the planning administrator prior to submitting a subdivision application. The preapplication review must take place no more than 30 business days from the date that the planning administrator receives a written request for a preapplication review from the subdivider.

(2) On receipt of an application for an exemption from subdivision review under 76-25-402 that contains all materials and information required by the governing body under subsection (5), the local government:

(a) shall approve or deny the application within 20 business days;

(b) may not impose conditions on the approval of an exemption from subdivision review except for conditions necessary to ensure compliance with the survey requirements of 76-25-412(1); and

(c) may require the certificate of survey to be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before filing with the county clerk and recorder. The examining land surveyor shall certify compliance in a printed or stamped certificate signed by the surveyor on the certificate of survey. A professional land surveyor may not act as an examining land surveyor in regard to a certificate of survey in which the surveyor has a financial or personal interest.

(3) (a) When a proposed subdivision lies entirely within an incorporated city or is proposed for annexation into the city, the application and preliminary plat must be submitted to and approved by the city.

(b) Except as provided in subsection (3)(c), when a proposed subdivision lies entirely in an unincorporated area, the application and preliminary plat must be submitted to and approved by the county.

(c) If the proposed subdivision lies within an area subject to increased growth pressures, higher development densities, or other urban development influences identified by either jurisdiction in 76-25-213, the jurisdiction shall provide other impacted jurisdictions the opportunity to review and comment on the application.

(d) If the proposed subdivision lies partly within an incorporated city, the application and preliminary plat must be submitted to and approved by both the city and the county governing bodies.

(4) A subdivision application is considered received on the date the application is delivered to the reviewing agent or agency if accompanied by the review fee.

(5) (a) The planning administrator has 20 business days to determine whether the application contains all information and materials necessary to complete the review of the application as set forth in the local subdivision regulations.

(b) The planning administrator may review subsequent submissions of the application only for information found to be deficient during the original review of the application under subsection (5)(a).

(c) A determination that an application contains sufficient information for review as provided in subsection (5)(a) does not ensure approval or conditional approval of the proposed subdivision and does not limit the ability of the planning administrator to request additional information during the review process.

(6) A subdivider may propose a phasing plan for approval with a preliminary plat. The phasing plan must include a phasing plan and map that demonstrates what lots will be included with each phase, what public facilities will be completed with each phase, and the timeline for the proposed phases.

(7) After accepting a complete application proposing subdivision of a site, the planning administrator shall make an initial determination of whether:

(a) the proposed subdivision, with or without variances or deviations from adopted standards, is in substantial compliance with the zoning and subdivision regulations; and

(b) all impacts resulting from the proposed subdivision were previously analyzed and made available for public review and comment in the adoption, amendment, or update of the land use plan, zoning regulations, and subdivision regulations.

(8) (a) If the planning administrator makes an initial determination that the proposed subdivision, with or without variances or deviations from adopted standards, meets the requirements of subsections (7)(a) and (7)(b), the planning administrator shall provide public notice of its initial determination in accordance with 76-25-106(3)(a) and (3)(b) and a 15-business-day written public comment period during which the public must have an opportunity to comment on the initial determination.

(b) Unless public comment received on or before the last day of the comment period provided in subsection (8)(a) supports a determination that the proposed subdivision fails to meet either one or both of the requirements of subsection (7)(a) or (7)(b), the planning administrator shall issue written findings stating the results of the public comment and a final written decision approving, approving with conditions, or denying the application, which may be appealed as provided in 76-25-503.

(c) If public comment received on or before the last day of the comment period in subsection (8)(a) provides evidence that the proposed subdivision fails to meet either one or both of the requirements of subsection (7)(a) or (7)(b), the planning administrator shall proceed with further review of the application as set forth in subsection (9).

(9) If the planning administrator makes an initial determination or public comment received under subsection (8)(c) provides evidence that a proposed subdivision of a site that, with or without variances or deviations from adopted standards, fails to meet either one or both of the requirements of subsection (7)(a) or (7)(b), the planning administrator shall proceed as follows:

(a) request the applicant to collect any additional data and perform any additional analysis necessary to provide the planning administrator and the public with the opportunity to comment on and consider the lack of substantial compliance with the zoning and subdivision regulations and any new or significantly increased potential impacts not previously identified and considered in the adoption, amendment, or update of the land use plan, zoning regulations, and subdivision regulations;

(b) collect any additional data or perform any additional analysis that the planning administrator determines is necessary to provide the local government and the public with the opportunity to comment on and consider the lack of substantial compliance with the zoning and subdivision regulations and any new or significantly increased potential impacts not previously identified or considered in the adoption, amendment, or update of the land use plan, zoning regulations, and subdivision regulations; and

(c) provide public notice of the planning administrator's initial or revised initial determination in accordance with 76-25-106(3)(a) and (3)(b) and a written comment period of 15 business days during which the public must have an opportunity to participate in and comment on the data collected and analysis performed pursuant to subsections (9)(a) and (9)(b).

(10) Any additional data, analysis, comment, or consideration described in subsection (9) must be limited to the lack of substantial compliance with the zoning and subdivision regulations and any new or significantly increased potential impacts resulting from the proposed subdivision to the extent that the impact was not previously identified in the adoption, amendment, or update of the land use plan, zoning regulations, zoning map, or subdivision regulations

(11) Within 30 business days of the end of the written comment period provided in subsection (9)(c), the planning administrator shall issue written findings stating the results of the public comment and shall issue a written decision to approve, conditionally approve, or deny a proposed subdivision application, which may be appealed as provided in 76-25-503.

(12) The basis of the decision to approve, conditionally approve, or deny a proposed preliminary plat is based on the administrative record as a whole and a finding that the proposed subdivision:

(a) meets the requirements and standards of this chapter;

(b) meets the survey requirements provided in 76-25-412(1);

(c) provides the necessary easements within and to the proposed subdivision for the location and installation of any planned utilities; and

(d) provides the necessary legal and physical access to each parcel within the proposed subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

(13) (a) The written decision must identify each finding required in subsection (12) that supports the decision to approve, conditionally approve, or deny a proposed preliminary plat, including any conditions placed on the approval that must be satisfied before a final plat may be approved.

(b) The written decision must identify all facts that support the basis for each finding and each condition and identify the regulations and statutes used in reaching each finding and each condition.

(c) When requiring mitigation as a condition of approval, a local government may not unreasonably restrict a landowner's ability to develop land. However, in some instances, the local government may determine that the impacts of a proposed development are unmitigable and preclude approval of the subdivision.

(14) The written decision to approve, conditionally approve, or deny a proposed subdivision must:

(a) be provided to the applicant;

(b) be made available to the public;

(c) include information regarding the appeal process; and

(d) state the timeframe the approval is in effect.

(15) Any changes to an approved preliminary plat that increases the number of lots or redesigns or rearranges six or more lots must undergo consideration and approval of an amended plat following the requirements of this section.

(16) Ministerial permits may be issued by the planning administrator without any discretionary review or analysis and may be appealed as provided in 76-25-503. *(Terminates June 30, 2027—sec. 16, Ch. 555, L. 2025.)*

76-25-408. *(Effective July 1, 2027)* **Local review procedure for divisions of land.** (1) An applicant may request a preapplication submittal and response from the planning administrator prior to submitting a subdivision application. The preapplication review must take place no more than 30 business days from the date that the planning administrator receives a written request for a preapplication review from the subdivider.

(2) On receipt of an application for an exemption from subdivision review under 76-25-402 that contains all materials and information required by the governing body under subsection (5), the local government:

(a) shall approve or deny the application within 20 business days;

(b) may not impose conditions on the approval of an exemption from subdivision review except for conditions necessary to ensure compliance with the survey requirements of 76-25-412(1); and

(c) may require the certificate of survey to be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before filing with the county clerk and recorder. The examining land surveyor shall certify compliance in a printed or stamped certificate signed by the surveyor on the certificate of survey. A professional land surveyor may not act as an examining land surveyor in regard to a certificate of survey in which the surveyor has a financial or personal interest.

(3) (a) When a proposed subdivision lies entirely within an incorporated city or is proposed for annexation into the city, the application and preliminary plat must be submitted to and approved by the city.

(b) Except as provided in subsection (3)(c), when a proposed subdivision lies entirely in an unincorporated area, the application and preliminary plat must be submitted to and approved by the county.

(c) If the proposed subdivision lies within an area subject to increased growth pressures, higher development densities, or other urban development influences identified by either jurisdiction in 76-25-213, the jurisdiction shall provide other impacted jurisdictions the opportunity to review and comment on the application.

(d) If the proposed subdivision lies partly within an incorporated city, the application and preliminary plat must be submitted to and approved by both the city and the county governing bodies.

(4) A subdivision application is considered received on the date the application is delivered to the reviewing agent or agency if accompanied by the review fee.

(5) (a) The planning administrator has 20 business days to determine whether the application contains all information and materials necessary to complete the review of the application as set forth in the local subdivision regulations.

(b) The planning administrator may review subsequent submissions of the application only for information found to be deficient during the original review of the application under subsection (5)(a).

(c) A determination that an application contains sufficient information for review as provided in subsection (5)(a) does not ensure approval or conditional approval of the proposed subdivision and does not limit the ability of the planning administrator to request additional information during the review process.

(6) A subdivider may propose a phasing plan for approval with a preliminary plat. The phasing plan must include a phasing plan and map that demonstrates what lots will be included with each phase, what public facilities will be completed with each phase, and the timeline for the proposed phases.

(7) (a) If an application proposes a subdivision of a site that, with or without variances or deviations from adopted standards, is in substantial compliance with the zoning and subdivision regulations and all impacts resulting from the development were previously analyzed and made available for public review and comment prior to the adoption of the land use plan, zoning regulations, and subdivision regulations, or any amendment thereto, the planning administrator shall issue a written decision to approve, approve with conditions, or deny the preliminary plat.

(b) The application is not subject to any further public review or comment, except as provided in 76-25-503.

(c) The decision by the planning administrator must be made no later than 15 business days from the date the application is considered complete.

(8) (a) If an application proposes subdivision of a site that, with or without variances or deviations from adopted standards, is in substantial compliance with the zoning and subdivision regulations but may result in new or significantly increased potential impacts that have not been previously identified and considered in the adoption of the land use plan, zoning regulations, or subdivision regulations, or any amendments thereto, the planning administrator shall proceed as follows:

(i) request the applicant to collect additional data and perform additional analysis necessary to provide the planning administrator and the public with the opportunity to comment on and consider the impacts identified in this subsection (8)(a);

(ii) collect additional data or perform additional analysis that the planning administrator determines is necessary to provide the local government and the public with the opportunity to comment on and consider the impacts identified in this subsection (8)(a); and

(iii) provide notice of a written comment period of 15 business days during which the public must have a reasonable opportunity to participate in the consideration of the impacts identified in this subsection (8)(a).

(b) Any additional analysis or public comment on the proposed development is limited to only new or significantly increased potential impacts resulting from the proposed development to the extent that the impact was not previously identified in the consideration and adoption of the land use plan, zoning regulations, subdivision regulations, or any amendments thereto.

(9) Within 30 business days of the end of the written comment period provided in subsection (8)(a)(iii), the planning administrator shall issue a written decision to approve, conditionally approve, or deny a proposed subdivision application.

(10) The basis of the decision to approve, conditionally approve, or deny a proposed preliminary plat is based on the administrative record as a whole and a finding that the proposed subdivision:

(a) meets the requirements and standards of this chapter;

(b) meets the survey requirements provided in 76-25-412(1);

(c) provides the necessary easements within and to the proposed subdivision for the location and installation of any planned utilities; and

(d) provides the necessary legal and physical access to each parcel within the proposed subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

(11) (a) The written decision must identify each finding required in subsection (10) that supports the decision to approve, conditionally approve, or deny a proposed preliminary plat, including any conditions placed on the approval that must be satisfied before a final plat may be approved.

(b) The written decision must identify all facts that support the basis for each finding and each condition and identify the regulations and statutes used in reaching each finding and each condition.

(c) When requiring mitigation as a condition of approval, a local government may not unreasonably restrict a landowner's ability to develop land. However, in some instances, the local government may determine that the impacts of a proposed development are unmitigable and preclude approval of the subdivision.

(12) The written decision to approve, conditionally approve, or deny a proposed subdivision must:

(a) be provided to the applicant;

(b) be made available to the public;

(c) include information regarding the appeal process; and

(d) state the timeframe the approval is in effect.

(13) The planning administrator's decision is final, and no further action may be taken except as provided in 76-25-503.

(14) Any changes to an approved preliminary plat that increases the number of lots or redesigns or rearranges six or more lots must undergo consideration and approval of an amended plat following the requirements of this section.

History: En. Sec. 29, Ch. 500, L. 2023; amd. Sec. 12, Ch. 555, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 12, Ch. 555, L. 2025. Amendment effective May 8, 2025, and terminates June 30, 2027.

76-25-409. Effect of preliminary plat approval. (1) (a) An approved or conditionally approved preliminary plat must be in effect for not more than 5 calendar years and not less than 1 calendar year.

(b) At the end of the period, the planning administrator may, at the request of the subdivider, extend the approval once by written agreement.

(c) On receipt of a request for an extension, the planning administrator shall determine whether the preliminary plat remains in substantial compliance with the zoning and subdivision regulations. If the preliminary plat is no longer in substantial compliance with the zoning or subdivision regulations, the extension may not be granted.

(d) After a preliminary plat is approved, the local government may not impose any additional conditions as a prerequisite to final plat approval if the approval is obtained within the original or extended approval period.

(e) Any subsequent requests by the subdivider for extension of the approval must be reviewed and approved by the governing body.

(2) An approved or conditionally approved phased preliminary plat must be in effect for 20 calendar years.

History: En. Sec. 30, Ch. 500, L. 2023.

76-25-410. *(Temporary)* **Local review procedure for final plats.** (1) The following must be submitted with a final plat application:

(a) information demonstrating the final plat conforms to the written decision and all conditions of approval set forth on the preliminary plat;

(b) a plat that meets the survey requirements provided in 76-25-412(1); and

(c) confirmation the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be subdivided have been paid.

(2) The final plat may be required to be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before filing with the county clerk and recorder. The examining land surveyor shall certify compliance in a printed or stamped certificate signed by the surveyor on the final plat. A professional land surveyor may not act as an examining land surveyor in regard to a plat in which the surveyor has a financial or personal interest.

(3) A final plat application is considered received on the date the application is delivered to the governing body or the agent or agency designated by the governing body if accompanied by the review fee.

(4) (a) Within 10 business days of receipt of a final plat, the planning administrator shall determine whether the final plat contains the information required under subsection (1) and shall notify the subdivider in writing.

(b) If the planning administrator determines that the final plat does not contain the information required under subsection (1), the planning administrator shall identify the final plat's defects in the notification.

(c) The planning administrator may review subsequent submissions of the final plat only for information found to be deficient during the original review of the final plat under subsection (4)(a).

(d) A determination that the application for a final plat contains sufficient information for review as provided in subsection (4)(a) does not ensure approval of the final plat and does not limit the ability of the planning administrator to request additional information during the review process.

(5) Once a determination is made under subsection (4) that the final plat contains the information required under subsection (1), the governing body shall review and approve or deny the final plat within 20 business days.

(6) The subdivider or the subdivider's agent and the governing body or its reviewing agent or agency may mutually agree to extend the review periods provided for in this section.

(7) (a) For a period of 5 years after approval of a phased preliminary plat, the subdivider may apply for final plat of any one or more phases following the process set forth in subsections (1) through (6).

(b) After 5 years have elapsed since approval of a phased preliminary plat, the planning administrator shall review each remaining phase to determine if a phase may result in new or significantly increased potential impacts that have not been previously identified and considered in the adoption of the land use plan, zoning or subdivision regulations, or review and approval of the phased preliminary plat. If the planning administrator identifies any new or

significantly increased potential impacts not previously identified and considered, the planning administrator shall proceed as set forth in 76-25-408(9).

(c) If necessary to mitigate impacts identified in subsection (7)(b), the planning administrator may impose conditions on any phase before final plat approval is sought. *(Terminates June 30, 2027—sec. 16, Ch. 555, L. 2025.)*

76-25-410. *(Effective July 1, 2027)* **Local review procedure for final plats.** (1) The following must be submitted with a final plat application:

(a) information demonstrating the final plat conforms to the written decision and all conditions of approval set forth on the preliminary plat;

(b) a plat that meets the survey requirements provided in 76-25-412(1); and

(c) confirmation the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be subdivided have been paid.

(2) The final plat may be required to be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before filing with the county clerk and recorder. The examining land surveyor shall certify compliance in a printed or stamped certificate signed by the surveyor on the final plat. A professional land surveyor may not act as an examining land surveyor in regard to a plat in which the surveyor has a financial or personal interest.

(3) A final plat application is considered received on the date the application is delivered to the governing body or the agent or agency designated by the governing body if accompanied by the review fee.

(4) (a) Within 10 business days of receipt of a final plat, the planning administrator shall determine whether the final plat contains the information required under subsection (1) and shall notify the subdivider in writing.

(b) If the planning administrator determines that the final plat does not contain the information required under subsection (1), the planning administrator shall identify the final plat's defects in the notification.

(c) The planning administrator may review subsequent submissions of the final plat only for information found to be deficient during the original review of the final plat under subsection (4)(a).

(d) A determination that the application for a final plat contains sufficient information for review as provided in subsection (4)(a) does not ensure approval of the final plat and does not limit the ability of the planning administrator to request additional information during the review process.

(5) Once a determination is made under subsection (4) that the final plat contains the information required under subsection (1), the governing body shall review and approve or deny the final plat within 20 business days.

(6) The subdivider or the subdivider's agent and the governing body or its reviewing agent or agency may mutually agree to extend the review periods provided for in this section.

(7) (a) For a period of 5 years after approval of a phased preliminary plat, the subdivider may apply for final plat of any one or more phases following the process set forth in subsections (1) through (6).

(b) After 5 years have elapsed since approval of a phased preliminary plat, the planning administrator shall review each remaining phase to determine if a phase may result in new or significantly increased potential impacts that have not been previously identified and considered in the adoption of the land use plan, zoning or subdivision regulations, or review and approval of the phased preliminary plat. If the planning administrator identifies any new or significantly increased potential impacts not previously identified and considered, the planning administrator shall proceed as set forth in 76-25-408(8).

(c) If necessary to mitigate impacts identified in subsection (7)(b), the planning administrator may impose conditions on any phase before final plat approval is sought.

History: En. Sec. 31, Ch. 500, L. 2023; amd. Sec. 13, Ch. 555, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 13, Ch. 555, L. 2025. Amendment effective May 8, 2025, and terminates June 30, 2027.

76-25-411. Filing and recordation of plats and certificates of survey. (1) (a) Except as provided in subsection (1)(b), every final plat or certificate of survey must be filed for record with the county clerk and recorder before title to the land may be sold or transferred in any manner. The clerk and recorder of the county may not accept any final plat or certificate of survey for record that has not been approved in accordance with this part unless the final plat or certificate of survey is located in an area over which the state does not have jurisdiction.

(b) After the preliminary plat of a subdivision has been approved or conditionally approved, the subdivider may enter into contracts to sell lots in the proposed subdivision if all of the following contract conditions are imposed and met:

(i) the purchasers of lots in the proposed subdivision make payments to an escrow agent, which must be a bank or savings and loan association chartered to do business in the state of Montana;

(ii) the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the county clerk and recorder;

(iii) if the final plat of the proposed subdivision is not filed with the county clerk and recorder within the approval period of the preliminary plat, the escrow agent shall immediately refund to each purchaser any payments the purchaser has made under the contract;

(iv) the county treasurer has certified that no real property taxes assessed and levied on the land to be divided are delinquent; and

(v) the following language is conspicuously set out in each contract: "The real property that is the subject of this contract has not been finally platted, and until a final plat identifying the property has been filed with the county clerk and recorder, title to the property may not be transferred in any manner".

(2) (a) Subject to subsection (2)(b), no division of land may be made unless the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid.

(b) (i) If a division of land includes centrally assessed property and the property taxes applicable to the division of land are not specifically identified in the tax assessment, the department of revenue shall prorate the taxes applicable to the land being divided on a reasonable basis. The owner of the centrally assessed property shall ensure that the prorated real property taxes and special assessments are paid on the land being sold before the division of land is made.

(ii) The county treasurer may accept the amount of the tax prorated pursuant to this subsection (2)(b) as a partial payment of the total tax that is due.

(3) (a) The county clerk and recorder shall maintain an index of all recorded and filed subdivision plats and certificates of survey.

(b) The index must list plats and certificates of survey by the quarter section, section, township, and range in which the platted or surveyed land lies and must list the recording or filing numbers of all plats or certificates of survey depicting lands lying within each quarter section. Each quarter section list must be definitive to the exclusion of all other quarter sections. The index must also list the names of all subdivision plats in alphabetical order and the place where filed.

(4) The recording of any plat made in compliance with the provisions of this chapter must serve to establish the identity of all lands shown on and being part of the plat. When lands are conveyed by reference to a plat, the plat itself or any copy of the plat properly certified by the county clerk and recorder as being a true copy thereof must be regarded as incorporated into the instrument of conveyance and must be received in evidence in all courts of this state.

(5) (a) Any plat prepared and recorded as provided in this part may be vacated either in whole or in part as provided by 7-5-2501, 7-5-2502, 7-14-2616(1) and (2), 7-14-2617, 7-14-4114(1) and (2), and 7-14-4115. Upon vacation, the governing body or the district court, as provided in 7-5-2502, shall determine to which properties the title to the streets and alleys of the vacated portions must revert. The governing body or the district court, as provided in 7-5-2502, shall take into consideration:

(i) the previous platting;

(ii) the manner in which the right-of-way was originally dedicated, granted, or conveyed;

(iii) the reasons stated in the petition requesting the vacation;

(iv) the parties requesting the vacation; and

(v) any agreements between the adjacent property owners regarding the use of the vacated area. The title to the streets and alleys of the vacated portions may revert to one or more of the owners of the properties within the platted area adjacent to the vacated portions.

(b) Notwithstanding the provisions of subsection (5)(a), when any poleline, pipeline, or any other public or private facility is located in a vacated street or alley at the time of the reversion of the title to the vacated street or alley, the owner of the public or private utility facility has an easement over the vacated land to continue the operation and maintenance of the public utility facility.

(6) (a) After a final subdivision plat has been filed for record with the county clerk and recorder, a homeowners' association may file a petition with the governing body to transfer title to the homeowners' association of any open spaces, parks, or similar common-use areas set aside in the final plat if the following conditions are met:

(i) the homeowners' association is organized in accordance with the covenants;

(ii) the covenants require the homeowners' association to maintain, repair, or insure the open spaces, parks, or similar common-use areas;

(iii) the governing body finds that it was the intent of the subdivider that the open spaces, parks, or similar common-use areas be owned by the homeowners' association; and

(iv) the property to be transferred is not owned by a person.

(b) The petition under subsection (6)(a) must be signed by an authorized representative of the homeowners' association.

(c) After a public hearing on the petition, the governing body shall issue written findings of fact and a decision based on the record. If the requirements of subsection (6)(a) have been met, the governing body shall approve the transfer. If the governing body approves the transfer, the approval must be recorded with the clerk and recorder.

History: En. Sec. 32, Ch. 500, L. 2023; amd. Sec. 5, Ch. 187, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 5, Ch. 187, L. 2025. Amendment effective April 17, 2025.

Retroactive Applicability: Section 8, Ch. 187, L. 2025, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to final subdivision plats recorded on or after October 1, 1973."

76-25-412. Survey requirements. (1) Divisions of land under this chapter must follow the uniform standards governing monumentation, certificates of survey, and subdivision plats prescribed and adopted by the board of professional engineers and professional land surveyors.

(2) All division of sections into aliquot parts and retracement of lines must conform to United States bureau of land management instructions, and all public land survey corners must be filed in accordance with Title 70, chapter 22, part 1. Engineering plans, specifications, and reports required in connection with public improvements and other elements of the subdivision required by the governing body must be prepared and filed by a registered engineer or a registered land surveyor, as their respective licensing laws allow, in accordance with this part and regulations adopted pursuant to this part.

(3) All divisions of land for sale other than a subdivision created after July 1, 1974, divided into parcels that cannot be described as 1/32 or larger aliquot parts of a United States government section or a United States government lot must be surveyed by or under the supervision of a registered land surveyor. Surveys required under this section must comply with the requirements of subsection (8).

(4) Except as provided in 70-22-105, within 180 days of the completion of a survey, the professional land surveyor responsible for the survey, whether the surveyor is privately or publicly employed, shall prepare and submit for filing a certificate of survey in the county in which the survey was made if the survey:

(a) provides material evidence not appearing on any map filed with the county clerk and recorder or contained in the records of the United States bureau of land management;

(b) reveals a material discrepancy in the map;

(c) discloses evidence to suggest alternate locations of lines or points; or

(d) establishes one or more lines not shown on a recorded map, the positions of which are not ascertainable from an inspection of the map without trigonometric calculations.

(5) A certificate of survey is not required for any survey that is made by the United States bureau of land management, that is preliminary, or that will become part of a subdivision plat being prepared for recording under the provisions of this chapter.

(6) It is the responsibility of the governing body to require the replacement of all monuments removed in the course of construction.

(7) (a) A registered land surveyor may administer and certify oaths when:

(i) it becomes necessary to take testimony for the identification of old corners or reestablishment of lost or obliterated corners;

(ii) a corner or monument is found in a deteriorating condition and it is desirable that evidence concerning it be perpetuated; or

(iii) the importance of the survey makes it desirable to administer an oath to the surveyor's assistants for the faithful performance of their duty.

(b) A record of oaths must be preserved as part of the field notes of the survey and noted on the certificate of survey filed under subsection (4).

(8) (a) (i) A surveyor who completes a survey identified in subsection (8)(b) that establishes or defines a section line and creates a parcel that crosses the established or defined section line so that an irrigation district assessment boundary is included in more than one section shall note on the survey the acreage of the farm unit or created parcel in each section.

(ii) The surveyor shall notify the appropriate irrigation district of the existence of the survey and the purpose of the survey.

(b) The requirements of subsection (8)(a) apply only to surveys for which the surveyor determines that, based on available public records, the survey involves land:

(i) traversed by a canal or ditch owned by an irrigation district; or

(ii) included in an irrigation district.

History: En. Sec. 33, Ch. 500, L. 2023.

76-25-413. Public improvements and extension of capital facilities. (1) Except as provided in subsections (1)(a) and (1)(c), the governing body shall require the subdivider to complete required improvements within the proposed subdivision prior to the approval of the final plat.

(a) (i) In lieu of the completion of the construction of any public improvements prior to the approval of a final plat, the governing body shall, at the subdivider's option, allow the subdivider to provide or cause to be provided a bond or other reasonable security, in an amount and with surety and conditions satisfactory to the governing body, providing for and securing the construction and installation of the improvements within a period specified by the governing body and expressed in the bonds or other security. The governing body shall reduce bond or security requirements commensurate with the completion of improvements. Failure of the local government to require the renewal of a bond does not waive the subdivider's responsibility to complete the required improvements prior to the approval of the final plat.

(ii) In lieu of requiring a bond or other means of security for the construction or installation of all the required public improvements under subsection (2)(a)(i), the governing body may enter into a subdivision improvements agreement with the subdivider that provides for an incremental payment, guarantee plan, or other method of completing the necessary improvements to serve the development as set forth in the preliminary plat approval.

(b) Approval by the governing body of a final plat prior to the completion of required improvements and without the provision of the security required under subsection (1)(a) is not an act of a legislative body for the purposes of 2-9-111.

(c) The governing body may require a percentage of improvements or specific types of improvements necessary to protect public health and safety to be completed before allowing bonding, other reasonable security, or entering into a subdivision improvements agreement for purposes of filing a final plat. The requirement is applicable to approved preliminary plats.

(2) (a) A local government may require a subdivider to pay or guarantee payment for part or all of the costs of extending capital facilities related to public health and safety, including but not limited to public roads, sewer lines, water supply lines, and storm drains to a subdivision. The costs must reasonably reflect the expected impacts directly attributable to the subdivision. A local government may not require a subdivider to pay or guarantee payment for part or all of the costs of constructing or extending capital facilities related to education.

(b) All fees, costs, or other money paid by a subdivider under this subsection (2) must be expended on the capital facilities for which the payments were required.

History: En. Sec. 34, Ch. 500, L. 2023.

Part 5
Fees, Variances, Appeals, Enforcement, and Penalties

76-25-501. Fees. The governing body may establish reasonable fees to be paid by an applicant for a zoning permit, subdivision application, appeals, or any other review performed by the local government pursuant to this chapter to defray the expense of performing the review.

History: En. Sec. 36, Ch. 500, L. 2023.

76-25-502. Variances. (1) All land use regulations must include a process for the submission and review of variances.

(2) The application for a variance must be for relief from land or building form design standards or subdivision design and improvement standards.

(3) Variance applications must be considered and approved or approved with conditions before application or in conjunction with application for a zoning permit or subdivision approval.

(4) The granting of a variance must meet all of the following criteria:

(a) the variance is not detrimental to public health, safety or general welfare;

(b) the variance is due to conditions peculiar to the property, such as physical surroundings, shape, or topographical conditions;

(c) strict application of the regulations to the property results in an unnecessary hardship to the owner as compared to others subject to the same regulations and that is not self-imposed;

(d) the variance may not cause a substantial increase in public costs; and

(e) the variance may not place the property in nonconformance with any other regulations.

(5) Additional criteria may apply if the variance is associated with a floodplain or floodway pursuant to the requirements of Title 76, chapter 5.

(6) Variance requests must be reviewed and determined by the planning administrator. The planning administrator's decision is final and no further action may be taken except as provided in 76-25-503.

History: En. Sec. 35, Ch. 500, L. 2023.

76-25-503. Appeals — public hearing and notice. (1) Appeals of any final decisions made pursuant to this chapter must be made in accordance with this section.

(2) For a challenge to the adoption of or amendment to a land use plan, zoning regulation, zoning map, or subdivision regulation, a petition setting forth the basis for the challenge must be presented to the district court within 30 days of the date of the resolution or ordinance adopted by the governing body.

(3) (a) Any final administrative land use decision, including but not limited to approval or denial of a zoning permit, preliminary plat or final plat, imposition of a condition on a zoning permit or plat, approval or denial of a variance from a zoning or subdivision regulation, or interpretation of land use regulations or map may be appealed by the applicant or any aggrieved person to the planning commission.

(b) An appeal under subsection (3)(a) must be submitted in writing within 15 business days of the challenged decision, stating the facts and raising all grounds for appeal that the party may raise in district court.

(c) (i) The planning commission shall hold a public hearing to hear the appeal de novo. The planning commission is not bound by the decision that has been appealed, but the appeal must be limited to the issues raised on appeal. The appellant has the burden of proving that the appealed decision was made in error.

(ii) Notice of the appeal must be published as provided in 7-1-2121 or 7-1-4127, as applicable.

(d) A decision of the planning commission on appeal takes effect on the date when the planning commission issues a written decision.

(4) (a) Any final land use decision by the planning commission may be appealed by the applicant, planning administrator, or any aggrieved person to the governing body.

(b) An appeal under subsection (4)(a) must be submitted in writing within 15 business days of the challenged decision, stating the facts and raising all grounds for appeal that the party may raise in district court.

(c) (i) The governing body shall hold a public hearing to hear the appeal de novo. The governing body is not bound by the decision that has been appealed, but the appeal must be limited to the issues raised on appeal. The appellant has the burden of proving that the appealed decision was made in error.

(ii) Notice of the appeal must be published as provided in 7-1-2121 or 7-1-4127, as applicable.

(d) A decision of the governing body on appeal takes effect on the date when the governing body issues a written decision.

(5) (a) No person may challenge in district court a land use decision until that person has exhausted the person's administrative appeal process as provided in this section.

(b) Any final land use decision of the governing body may be challenged by presenting a petition setting forth the grounds for review of a final land use decision with the district court within 30 calendar days after the written decision is issued.

(c) A challenge in district court to a final land use decision of the governing body is limited to the issues raised by the challenger on administrative appeal.

(6) Every final land use decision made pursuant to this section must be based on the administrative record as a whole and must be sustained unless the decision being challenged is arbitrary, capricious, or unlawful.

(7) Nothing in this chapter is subject to any provision of Title 2, chapter 4.

History: En. Sec. 37, Ch. 500, L. 2023; amd. Sec. 14, Ch. 555, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 14, Ch. 555, L. 2025. Amendment effective May 8, 2025.

76-25-504. Enforcement and penalties. (1) A local government may, by ordinance, establish civil penalties for violations of any of the provisions of this chapter or of any ordinances adopted under the authority of this chapter.

(2) Prior to seeking civil penalties against a property owner, a local government shall provide:

(a) written notice, by mail or hand delivery, of each ordinance violation to the address of the owner of record on file in the office of the county recorder;

(b) a reasonable opportunity to cure a noticed violation; and

(c) a schedule of the civil penalties that may be imposed on the owner for failure to cure the violation before expiration of a time certain.

(3) A local government may, in addition to other remedies provided by law, seek:

(a) an injunction, mandamus, abatement, or any other appropriate action provided for in law;

(b) proceedings to prevent, enjoin, abate, or remove an unlawful building, use, occupancy, or act; or

(c) criminal prosecution for violation of any of the provisions of this chapter or of any ordinances adopted under the authority of this chapter as a misdemeanor punishable by a fine not to exceed $500 per day for each violation.

(4) In any enforcement action taken under this section or remedy sought thereunder, the parties shall pay their own costs and attorney fees.

History: En. Sec. 38, Ch. 500, L. 2023.

TITLE 77
STATE LANDS

Ch.
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3. Rock, Mineral, Coal, Oil, and Gas Resources.
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CHAPTER 1
ADMINISTRATION OF STATE LANDS

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77-1-1107. Void.
77-1-1108. Void.
77-1-1109. Legislative findings — purpose.
77-1-1110. Definitions.
77-1-1111. Use of beds of navigable rivers — authorization requirement restricted.
77-1-1112. Historic use of navigable riverbeds — authorization required — exemptions.
77-1-1113. Historic riverbed use account.
77-1-1114. Notice required.
77-1-1115. Navigable riverbed uses — lease, license, or easement required — challenges.
77-1-1116. Easement transferable — relocation of structure — increased footprint.
77-1-1117. Board to adopt rules.

Part 1
General Provisions

Part Cross-References

State lands — public school fund, Art. X, sec. 2, Mont. Const.
Board of Land Commissioners, Art. X, sec. 4, Mont. Const.
Income from state lands — public school fund, Art. X, sec. 5, Mont. Const.
State university funds from state lands, Art. X, sec. 10, Mont. Const.
Public land trust — disposition, Art. X, sec. 11, Mont. Const.
Public land access, Title 76, ch. 17.
Income from land not held in trust — credit to general fund, 77-3-436.

77-1-101. Definitions. Unless the context requires otherwise and except for the definition of state land in 77-1-701, in this title, the following definitions apply:

(1) "Board" means the board of land commissioners provided for in Article X, section 4, of the Montana constitution.

(2) "Commercial or concentrated recreational use" means any recreational use that is organized, developed, or coordinated, whether for profit or otherwise. Commercial or concentrated recreational use includes all outfitting activity and all activities not included within the definition of general recreational use.

(3) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(4) "Distributable revenue" applies to all land trusts managed by the board, except property held pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329, and includes:

(a) 95% of all revenue from the management of school trust lands and the common school permanent fund, except for mineral royalties or land sale proceeds that are deposited directly in the permanent fund;

(b) the interest and income described in 20-9-341, less any unrealized gains or losses;

(c) the interest and income received from the leasing, licensing, or other use of state trust lands; and

(d) subject to 17-3-1003, the proceeds and income from the sale of timber from capitol building land grant and university system lands.

(5) (a) "General recreational use" includes noncommercial and nonconcentrated hunting, fishing, and other activities determined by the board to be compatible with the use of state lands.

(b) The term does not include the use of streams and rivers by the public under the stream access laws provided in Title 23, chapter 2, part 3.

(6) "Legally accessible state lands" means state lands that can be accessed by:

(a) dedicated public road, right-of-way, or easement;

(b) public waters;

(c) adjacent federal, state, county, or municipal land if the land is open to public use; or

(d) adjacent contiguous private land if permission to cross the land has been secured from the landowner. The granting of permission by a private landowner to cross private property in a particular instance does not subject the state land that is accessed to general recreational use by members of the public, other than those granted permission.

(7) "Noxious weeds" or "weeds" means any exotic plant species established or that may be introduced in the state that may render land unfit for agriculture, forestry, livestock, wildlife, or other beneficial uses or that may harm native plant communities and that is designated:

(a) as a statewide noxious weed by rule of the department of agriculture; or

(b) as a district noxious weed by a district weed board organized under 7-22-2103.

(8) (a) "State land" or "lands" means:

(i) lands granted to the state by the United States for any purpose, either directly or through exchange for other lands;

(ii) lands deeded or devised to the state from any person; and

(iii) lands that are the property of the state through the operation of law.

(b) The term does not include:

(i) lands that the state conveys through the issuance of patent;

(ii) lands that are used for building sites, campus grounds, or experimental purposes by a state institution and that are the property of that institution;

(iii) lands that the board of regents of higher education has authority to dispose of pursuant to 20-25-307; or

(iv) lands acquired through investments under the provisions of 17-6-201.

(9) "State trust land" means lands or property interests held in trust by the state:

(a) under Article X, sections 2 and 11, of the Montana constitution;

(b) through The Enabling Act of Congress (approved February 22, 1889, 25 Stat. 676), as amended; and

(c) through the operation of law for specified trust beneficiaries.

(10) "Weed management" or "control" has the meaning provided in 7-22-2101.

History: En. Sec. 2, Ch. 60, L. 1927; re-en. Sec. 1805.2, R.C.M. 1935; amd. Sec. 7, Ch. 184, L. 1961; amd. Sec. 2, Ch. 428, L. 1973; amd. Sec. 2, Ch. 203, L. 1977; R.C.M. 1947, 81-102; amd. Sec. 10, Ch. 467, L. 1987; amd. Sec. 2, Ch. 609, L. 1991; amd. Sec. 3, Ch. 370, L. 1995; amd. Sec. 313, Ch. 418, L. 1995; amd. Sec. 2, Ch. 32, L. 1997; amd. Sec. 1, Ch. 164, L. 2007; amd. Sec. 7, Ch. 465, L. 2009; amd. Sec. 2, Ch. 93, L. 2011.

Cross-References

Lands granted to state by United States, The Enabling Act (see anno. vol. 1): sec. 4 (title to; jurisdiction over); sec. 10 (school support); sec. 11 (sale and lease of); sec. 12 (in aid of public buildings); sec. 14 (selection of; for universities); sec. 15 (for Deer Lodge prison); sec. 16 (agricultural college); sec. 17 (in aid of public buildings); and sec. 19 (manner of selection).

Capitol building lands, 18-2-107.
Property of state — what included, 70-1-202.
Acceptance of federal land by Board of Land Commissioners, 77-1-211.

77-1-102. Ownership of certain islands and riverbeds. (1) The following lands belong to the state of Montana to be held in trust for the benefit of the public schools of the state:

(a) all islands existing in the navigable streams or lakes in this state that have not been surveyed by the government of the United States; and

(b) all lands that at any time in the past constituted an island or part of an island in a navigable stream or lake.

(2) This section does not apply to lands that are occupied by and belong to riparian landowners if the lands were formed by accretions.

(3) State-owned riverbeds are public lands of the state that are held in trust for the people as provided in Article X, section 11, of the Montana constitution.

History: En. Sec. 1, Ch. 36, L. 1937; R.C.M. 1947, 81-2301; amd. Sec. 3, Ch. 371, L. 2011; amd. Sec. 2, Ch. 210, L. 2013.

Cross-References

Ownership of land bounded by water, 70-16-201.
Islands and accretion, Title 70, ch. 18, part 2.
Navigable waters, 85-1-112.

77-1-103. Administration of lands. (1) The board shall sell lands under 77-1-102(1) in the same manner as other school lands of the state are sold.

(2) The board may sell the lands under 77-1-102(1) or lease the lands under 77-1-102 without having them surveyed unless the board considers it to be to the best interests of the state to have the lands surveyed as in 77-1-104.

(3) The proceeds from the leasing and sale of the lands under 77-1-102 must be disposed of in the same manner as disposition is made of the proceeds from the leasing and sale of school lands of the state.

(4) The income received from the leasing, licensing, or other use of lands under 77-1-102(1) or riverbeds under 77-1-102(3) must be deposited in accordance with 17-3-1003(5).

History: En. Sec. 2, Ch. 36, L. 1937; amd. Sec. 104, Ch. 428, L. 1973; R.C.M. 1947, 81-2302; amd. Sec. 4, Ch. 371, L. 2011; amd. Sec. 36, Ch. 55, L. 2015.

Cross-References

Disposition of proceeds from sale, 77-2-337.
Disposition of proceeds from lease, 77-3-106 (mining leases); 77-3-206 (nonmetallic minerals); 77-3-318 (coal); 77-3-436 (oil); 77-4-127 (geothermal).

77-1-104. Survey of lands. If the board considers it necessary that any of the lands mentioned in 77-1-102 be surveyed, it must have the lands surveyed by the county surveyor of the county in which the lands are located. If there is no county surveyor, if the county surveyor is unable to make the survey, or if the best interests of the state require, the board shall appoint a qualified surveyor to make the surveys. The county surveyor or other surveyor appointed shall make an actual survey establishing four corners of every quarter section and connecting the same with a United States survey and within 30 days after the survey file with the county clerk and recorder of that county a copy under oath of the surveyor's field notes and plat and a certified copy of the field notes and plat with the department. For the services required in connection with the survey, the county surveyor or other surveyor appointed is entitled to fees as prescribed in 7-4-2821. The fees must be paid in the same manner as other expenses of the department.

History: En. Sec. 3, Ch. 36, L. 1937; amd. Sec. 105, Ch. 428, L. 1973; R.C.M. 1947, 81-2303; amd. Sec. 2535, Ch. 56, L. 2009.

Cross-References

County Surveyor, Title 7, ch. 4, part 28.
Engineers and land surveyors, Title 37, ch. 67.

77-1-105. Determining title. The board may take all proper proceedings for the purpose of determining the title to the beds of lakes and other bodies of water and of streams within the state and to that end may bring or defend suits or other proceedings in court or before other proper tribunals.

History: En. Sec. 14, Ch. 148, L. 1937; Sec. 81-614, R.C.M. 1947; redes. 81-2305 and amd. by Sec. 46, Ch. 428, L. 1973; R.C.M. 1947, 81-2305.

Cross-References

Water rights, Art. IX, sec. 3, Mont. Const.
Suits affecting title — Governor may require Attorney General to appear, 2-15-201.
Limitations on actions concerning real property — state, Title 70, ch. 19, part 3.
Quieting title to real property, Title 70, ch. 28.

77-1-106. *(Temporary)* **Setting of rates or fees — rules.** (1) In setting the lease rental rates, agreement rates, or fees for the use of state lands and cabin sites, the board shall consider the impact of the uses on the school trust asset, lessee expenses for management, water development, weed control, fire control, the term of the lease, the production capabilities, the conditions on the lease payment, and any other required expenses reasonably borne by the lessee. In setting cabin site lease rates, the board shall consider expenses that are commonly incurred by the lessees to preserve the value of the state land or to provide services commonly provided by private lessors in the area.

(2) All lease rental rates, agreement rates, and fees established by the board under 77-1-208, 77-1-802, 77-1-815, 77-6-202, 77-6-501, 77-6-502, and 77-6-507 must consider the trust asset and be in the best interests of the state with regard to the long-term productivity of the school trust lands, while optimizing the return to the school trust.

(3) The board shall comply with Title 2, chapter 4, part 3, in setting rental rates, agreement rates, and license fees pursuant to 77-1-208, 77-1-802, 77-1-815, 77-6-202, 77-6-501, 77-6-502, and 77-6-507. *(Void on occurrence of contingency—sec. 8, Ch. 596, L. 2003.)*

77-1-106. *(Effective on occurrence of contingency)* **Setting of rates or fees — rules.** (1) In setting the lease rental rates or fees for the use of state lands and cabin sites, the board shall consider the impact of the uses on the school trust asset, lessee expenses for management, water development, weed control, fire control, the term of the lease, the production capabilities, the conditions on the lease payment, and any other required expenses reasonably borne by the lessee. In setting cabin site lease rates, the board shall consider expenses that are commonly incurred by the lessees to preserve the value of the state land or to provide services commonly provided by private lessors in the area.

(2) All lease rental rates and fees established by the board under 77-1-208, 77-1-802, 77-6-202, 77-6-501, 77-6-502, and 77-6-507 must consider the trust asset and be in the best interests of the state with regard to the long-term productivity of the school trust lands, while optimizing the return to the school trust.

(3) The board shall comply with Title 2, chapter 4, part 3, in setting rental rates and license fees pursuant to 77-1-208, 77-1-802, 77-6-202, 77-6-501, 77-6-502, and 77-6-507.

History: (1), (2)En. Sec. 13, Ch. 586, L. 1993; (3)En. Sec. 10, Ch. 586, L. 1993; amd. Sec. 3, Ch. 596, L. 2003.

Compiler's Comments

Contingent Voidness: Section 8, Ch. 596, L. 2003, provided: "(1) If the department of natural resources and conservation and the department of fish, wildlife, and parks do not sign an agreement to compensate state trust land beneficiaries for the use and impacts associated with hunting, fishing, and trapping on state trust land by [the effective date of this act] [effective March 1, 2004], then [this act] is void. The department of natural resources and conservation shall notify the code commissioner of the failure to reach an agreement. [An agreement was entered into effective December 8, 2003.]

(2) (a) If an agreement between the department of natural resources and conservation and the department of fish, wildlife, and parks to compensate state trust land beneficiaries for the use and impacts associated with hunting, fishing, and trapping on state trust land is terminated prior to the expiration date of the agreement, then [this act] is void upon termination. The department of natural resources and conservation shall notify the code commissioner of the termination.

(b) If the department of natural resources and conservation and the department of fish, wildlife, and parks do not enter into a renewal agreement prior to the expiration date of an agreement, then [this act] is void on the expiration date of the agreement. The department of natural resources and conservation shall notify the code commissioner of the expiration.

(3) If a court of competent jurisdiction determines that the agreement to compensate state trust land beneficiaries for the use and impacts associated with hunting, fishing, and trapping on state trust lands is invalid, then [this act] is void on the date the court's judgment is final. The department of natural resources and conservation shall notify the code commissioner of the entry of the judgment.

(4) If the department of natural resources and conservation and the department of fish, wildlife, and parks receive written notice from the regional director of the United States fish and wildlife service that [this act] will result in a loss of federal fish and wildlife funds, then [this act] is void. The department of natural resources and conservation shall notify the code commissioner that the department has received a notice and the date upon which the notice was received."

77-1-107. Purchase of historic easement across state land for benefit of private land. If a historic easement or right-of-way for access to private land exists across state land, the person owning the private land may purchase the nonexclusive easement as a permanent,

nonexclusive easement. Upon receipt of the fair market value of the easement and proof of the existence of the easement or right-of-way and the purpose and proposed purchaser's use of the nonexclusive easement, the board may sell a permanent nonexclusive easement if it is across school land or other land granted to the state for the support and benefit of a state institution and shall sell a permanent nonexclusive easement if it is across other state land.

History: En. Sec. 1, Ch. 107, L. 1999.

77-1-108. Trust land administration account — administrative costs — appropriation. (1) There is a trust land administration account in the state special revenue fund. Money in the account is available to the department by appropriation and must be used to pay the costs of administering state trust lands. This includes the cost of managing assets, including but not limited to real property and monetary assets.

(2) Appropriations from the account for each fiscal year may not exceed an amount equal to 25% of the distributable revenue, as defined in 77-1-101, generated in the fiscal year completed prior to the legislative session that will appropriate money for the next biennium. This excludes revenue generated by the forest improvement fee provided for in 77-5-204.

(3) (a) Pursuant to subsection (1), the administrative costs must be determined for each land trust. The department may adopt rules regarding the calculation of administrative costs as necessary.

(b) Each fiscal year, the department shall compare administrative costs for each land trust to the amount of revenue that land trust generates for the account. If the amount of revenue deposited pursuant to 77-1-109(2) exceeds the administrative costs for a specific land trust, the excess revenue must be distributed as provided in subsection (4) of this section.

(c) If revenue deposited from a specific land trust is insufficient to defray the administrative costs associated with managing that land trust and the money held for that trust in the earnings reserve account established in 77-1-132 is also insufficient, the board may receive a general fund loan pursuant to 17-2-107 to offset the difference. A general fund loan made pursuant to this subsection (3)(c) must be repaid within 5 years and must bear interest at a rate of return equal to that earned by the board of investments' short-term investment pool during that period.

(4) (a) Except as provided in subsections (4)(b) and (5), up to one-third of the unreserved distributable revenue remaining in the account at the end of a fiscal year may be transferred to the earnings reserve account provided for in 77-1-132 and accounted for by trust. The remaining unreserved revenue must be transferred to each of the permanent funds in proportionate shares to each fund's contribution to the account.

(b) At the end of the fiscal year, unreserved funds received pursuant to 77-1-109(2)(a)(ii) and (2)(a)(iii) must be transferred to each of the permanent funds or to the appropriate trust or distributed to the beneficiary in proportionate shares to each fund's contribution to the account.

(5) (a) The amount of $80,000 each biennium is transferred from the state general fund to an account in the state special revenue fund. The account is statutorily appropriated, as provided in 17-7-502, to the department for the purposes of administering the land granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329. Any unexpended portion of the statutory appropriation may be retained in the account and used for the administration of the Morrill Act land.

(b) At the end of each fiscal year, the department shall pay from the appropriation in subsection (5)(a) to the trust containing proceeds derived from land granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329, an amount calculated to be the cost of administering the investment of the fund derived from that trust. The payment must be based upon the percentage that the Morrill Act fund constitutes of the total fund derived from all trust lands. If the appropriation in subsection (5)(a) is insufficient to pay the calculated administrative cost, a general fund loan may be used pursuant to 17-2-107 to offset the difference.

History: En. Sec. 1, Ch. 122, L. 1999; amd. Sec. 29, Ch. 34, L. 2001; amd. Sec. 4, Ch. 247, L. 2007; amd. Sec. 8, Ch. 465, L. 2009.

77-1-109. Deposits of proceeds in trust land administration account. (1) The amount of money that is deposited into the trust land administration account established in 77-1-108 may not exceed an amount equal to 25% of distributable revenue generated in the fiscal year

completed prior to the legislative session that will appropriate money for the next biennium. This excludes revenue generated by the forest improvement fee provided for in 77-5-204.

(2) (a) Subject to subsection (1), the department shall deposit into the trust land administration account the following:

(i) distributable revenue;

(ii) the proceeds or income from the sale of easements and timber, except timber from public school and Montana university system lands;

(iii) mineral royalties; and

(iv) fees collected pursuant to 77-2-328.

(b) As deposits are made, they must be identified and accounted for by trust.

(c) The department may not make deductions from interest or income generated from lands granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329.

(3) After the deposits in subsection (2) have been made, the remainder of the proceeds, other than proceeds from timber from Montana university system lands, must be deposited in accordance with 17-3-1003, 18-2-107, and 20-9-341(2). Timber proceeds from university system lands must be paid over to the state treasurer, who shall deposit the money to the credit of the proper fund for use as provided in 17-3-1003.

History: En. Sec. 2, Ch. 122, L. 1999; amd. Sec. 30, Ch. 34, L. 2001; amd. Sec. 1, Ch. 420, L. 2001; amd. Sec. 2, Ch. 291, L. 2003; amd. Sec. 4, Ch. 355, L. 2003; amd. Sec. 5, Ch. 247, L. 2007; amd. Sec. 9, Ch. 465, L. 2009; amd. Sec. 7, Ch. 17, L. 2013.

77-1-110. Written undertaking required in legal action for challenge to use or disposition of state lands. (1) The purpose of this section is to advance the legitimate state interest in the protection of state trust assets as provided for in Article X, section 11, of the Montana constitution.

(2) In any civil action seeking an injunction or restraining order concerning a decision of the board or department approving a use or disposition of state lands that would produce revenue for any state lands trust beneficiary, the court shall require a written undertaking for the payment of damages that may be incurred by the trust beneficiary if the board or the department is wrongfully enjoined or restrained.

History: En. Sec. 1, Ch. 273, L. 1995; amd. Sec. 1, Ch. 504, L. 2001.

Cross-References

Undertakings for security, Title 25, ch. 1, part 4.

Injunctions, Title 27, ch. 19.

77-1-111. Court actions. (1) All actions for the recovery of money due under this title or for the cancellation of leases or for the cancellation of certificates of purchase or patents or for the recovery of state lands, actions of forcible entry and detainer, actions for ejectment, and all other actions affecting any state lands are controlled, as to venue, by the provisions of the rules of civil procedure relating to the place of trial of civil actions and must be conducted by the attorney general.

(2) When requested by the attorney general, the county attorney of each county in the state shall represent the state in all foreclosure proceedings, collections of delinquent rentals, actions for trespass on state lands, and in all other state land matters that may arise in the county attorney's county. The county attorney is not entitled to charge the state any compensation for services beyond the county attorney's regular salary.

(3) The use of a ford or crossing on a navigable river or stream may not be considered a trespass.

History: (1)En. Sec. 100, Ch. 147, L. 1909; re-en. Sec. 1921, R.C.M. 1921; re-en. Sec. 1921, R.C.M. 1935; Sec. 79-1503, R.C.M. 1947; (2)En. Sec. 112, Ch. 60, L. 1927; re-en. Sec. 1805.112, R.C.M. 1935; Sec. 81-1015, R.C.M. 1947; R.C.M. 1947, 79-1503, 81-1015; amd. Sec. 2536, Ch. 56, L. 2009; amd. Sec. 6, Ch. 472, L. 2009.

Cross-References

Suits affecting title — Governor may require Attorney General to appear, 2-15-201.

Duties of Attorney General, 2-15-501.

Duties of County Attorney to state, 7-4-2716, 7-4-2717.

Venue — real property actions, 25-2-123.

Action for recovery of real property, 70-19-102.

Provisions relating to state in real property actions, Title 70, ch. 19, part 3.

Forcible entry and detainer, Title 70, ch. 27.
Procedure for default in land purchases from state, 77-2-332.
State land patents — generally, 77-2-341 through 77-2-345.

77-1-112. Violations classified. (1) Any officer, employee, or representative of the state who directly or indirectly accepts any money or any other valuable thing, except the officer's, employee's, or representative's regular and lawful compensation, for performing or not performing an official act under the provisions of this title or for modifying the performance of an official act is guilty of a felony and is punishable as provided in 77-1-115.

(2) Any officer, employee, or representative of the state who knowingly and willfully makes any false classification or appraisal of any state land or of any land offered the state for sale or offered as security for a loan from the state or who falsely classifies or scales any timber on state lands or from state lands or any timber in which the state is interested or who knowingly and willfully makes any false report of any classification or appraisal or scaling is guilty of a felony and is punishable as provided in 77-1-115.

(3) (a) Any officer, employee, or representative of the state who otherwise violates any of the provisions of this title:

(i) is guilty of a felony if the violation results in a loss to the state of $1,000 or more; or

(ii) is guilty of a misdemeanor if the violation results in a loss to the state of less than $1,000 or in no pecuniary loss.

(b) The punishment shall be as provided in 77-1-115.

History: (1), (2)En. Sec. 118, Ch. 60, L. 1927; re-en. Sec. 1805.118, R.C.M. 1935; Sec. 81-1111, R.C.M. 1947; (3)En. Sec. 106, Ch. 147, L. 1909; re-en. Sec. 1927, R.C.M. 1921; re-en. Sec. 1927, R.C.M. 1935; Sec. 79-1504, R.C.M. 1947; R.C.M. 1947, 79-1504, 81-1111; amd. Sec. 1, Ch. 15, L. 1979; amd. Sec. 2537, Ch. 56, L. 2009.

Cross-References

Public employee standards of conduct, Title 2, ch. 2.
Bribery, 45-7-101.
Official misconduct, 45-7-401.

77-1-113. Restrictions on who may buy or lease state lands. It is unlawful for any member of the board, any person appraising lands or in the employ of the state for the selection, classification, appraisal, sale, or leasing of any state lands or the timber on state lands, or any officer or employee of the department to purchase or lease, directly or indirectly, any state lands or any timber on state lands.

History: En. Sec. 117, Ch. 60, L. 1927; re-en. Sec. 1805.117, R.C.M. 1935; amd. Sec. 75, Ch. 428, L. 1973; R.C.M. 1947, 81-1110; amd. Sec. 2, Ch. 15, L. 1979; amd. Sec. 314, Ch. 418, L. 1995.

Cross-References

Public officers not to have interest in contracts, 2-2-201.

77-1-114. Prosecutions. (1) Whenever an arrest is made for any violation of the provisions of this title or whenever any information of a violation is given to the the county attorney of the county in which this act was committed, the county attorney shall prosecute the offender or offenders if in the county attorney's judgment the facts warrant the prosecution.

(2) If a county attorney fails to comply with the provisions of this section, the county attorney is guilty of a misdemeanor and, upon conviction, shall be fined not less than $100 or more than $1,000. Upon the county attorney's conviction, the district court in which the county attorney is convicted shall declare the county attorney's office vacant and notify the proper appointing power. Actions against the county attorney must be brought by the attorney general in the name of the state.

(3) The penalties of this section also apply to any magistrate with proper authority who refuses or neglects to cause the arrest and prosecution of any person when a complaint under oath of a violation of any of the provisions of this title has been lodged with the magistrate.

History: En. Sec. 17, Ch. 147, L. 1909; re-en. Sec. 1839, R.C.M. 1921; re-en. Sec. 1839, R.C.M. 1935; R.C.M. 1947, 81-1416; amd. Sec. 3, Ch. 15, L. 1979; amd. Sec. 2538, Ch. 56, L. 2009.

Cross-References

Forfeiture of office — criminal conviction, 2-16-501, 45-7-401.
Vacancies in office, 7-4-2206.
Duties of County Attorney to state, 7-4-2716.
Official misconduct, 45-7-401.

77-1-115. Punishments. (1) An officer, employee, or representative of the state who is found guilty of a felony as defined in 77-1-112 is punishable by imprisonment in the state penitentiary for not less than 1 or more than 10 years, by a fine that may not be less than $500 or less than twice the amount of the loss that resulted to the state through the crime of which the officer, employee, or representative has been convicted, or by both.

(2) An officer, employee, or representative of the state who is found guilty of a misdemeanor as defined in 77-1-112 is punishable by imprisonment in a county jail not to exceed 1 year, by a fine that may not be less than $100 or less than twice the amount of the loss that resulted to the state through the crime of which the officer, employee, or representative has been convicted, or by both.

History: En. Sec. 119, Ch. 60, L. 1927; re-en. Sec. 1805.119, R.C.M. 1935; R.C.M. 1947, 81-1112; amd. Sec. 4, Ch. 15, L. 1979; amd. Sec. 2539, Ch. 56, L. 2009.

Cross-References

Forfeiture of office — criminal conviction, 2-16-501, 45-7-401.

77-1-116. Additional penalty. In addition to the penalties provided for in this code against those committing trespass upon any of the lands owned or held in trust or otherwise by the state, the board is hereby authorized and empowered, without legal process, to seize and take or cause to be seized and taken any and all lumber, wood, grass, or other property unlawfully severed from the lands, whether the same has been removed from said lands or not, and may dispose of the same at either public or private sale in such manner as will be most conducive to the interests of the state, and all moneys arising therefrom, after deducting the reasonable and necessary expenses of such seizure and sale, shall be a part of the permanent fund to which such lands may belong.

History: En. Sec. 7, p. 49, L. 1893; re-en. Sec. 3566, Pol. C. 1895; re-en. Sec. 2219, Rev. C. 1907; amd. Sec. 59, Ch. 147, L. 1909; re-en. Sec. 1879, R.C.M. 1921; re-en. Sec. 1879, R.C.M. 1935; R.C.M. 1947, 81-1602.

Cross-References

Criminal trespass to land, 45-6-203.

Trespass for taking timber, 70-16-107.

77-1-117. Disposition of fines and judgment proceeds. (1) Unless otherwise provided, all money received as fines, fees, and forfeitures under this title or as penalties for the violation of any of the land laws of this state, except money received by a justice's court, must be paid to the department of revenue for deposit in the general fund.

(2) Unless otherwise provided, all money, including interest, awarded by a court as compensatory damages under this title or any of the land laws of this state for the wrongful use or occupation of state lands must be deposited in the account or fund in which the money would have been deposited had the party assessed with the damages complied with the land laws of this state and may be paid out of the account or fund only through an appropriation by the legislature.

History: En. Sec. 104, Ch. 147, L. 1909; amd. Sec. 1, Ch. 99, L. 1917; amd. Sec. 1, Ch. 171, L. 1919; amd. Sec. 1, Ch. 103, L. 1921; re-en. Sec. 1919, R.C.M. 1921; re-en. Sec. 1919, R.C.M. 1935; R.C.M. 1947, 79-1502; amd. Sec. 5, Ch. 15, L. 1979; amd. Sec. 49, Ch. 557, L. 1987; amd. Sec. 40, Ch. 257, L. 2001; amd. Sec. 1, Ch. 413, L. 2011.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

General fund, 17-2-102.

77-1-118. Use of exploding targets prohibited — definition — penalty. (1) The use of exploding targets on properties managed pursuant to this title is prohibited when the department of natural resources and conservation determines that fire danger is high, very high, or extreme.

(2) For the purposes of this section, "exploding targets" means commercial targets that explode when impacted by a high-velocity projectile or targets created by combining components, including but not limited to ammonium nitrate and aluminum powder, that explode when impacted by a high-velocity projectile.

(3) A person convicted of a violation of this section is guilty of a misdemeanor and shall be fined not more than $500 or be imprisoned in the county jail for not more than 6 months.

History: En. Sec. 2, Ch. 513, L. 2021.

77-1-119 reserved.

77-1-120. Terminated. Sec. 17, Ch. 586, L. 1993.
History: En. Sec. 14, Ch. 586, L. 1993.

77-1-121. Environmental review compliance — exemptions. (1) Except as provided in 77-1-122, 77-1-1112, and subsection (2) of this section, the department and board are required to comply with the provisions of Title 75, chapter 1, parts 1 and 2, when implementing provisions within this title only if the department is actively proposing a sale or exchange or to issue a right-of-way, easement, placement of improvement, lease, license, or permit or is acting in response to an application for an authorization for a proposal.

(2) The department and board are exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when issuing any lease or license that expressly states that the lease or license is subject to further permitting under any of the provisions of Title 75 or 82.

(3) Except for rulemaking and as provided in subsection (1), the department and board are otherwise exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when implementing provisions within this title, including but not limited to the issuance of lease renewals. The department and board do not have an obligation to comply with the provisions of Title 75, chapter 1, parts 1 and 2, when implementing provisions within this title if the department or board chooses not to take any action, even though either may have the authority to take an action.

(4) The department and board are exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when taking actions, including preparing plans or proposals, in relation to and in compliance with the following local government actions:

(a) development or adoption of a growth policy or a neighborhood plan pursuant to Title 76, chapter 1;

(b) development or adoption of zoning regulations;

(c) review of a proposed subdivision pursuant to Title 76, chapter 3;

(d) actions related to annexation;

(e) development or adoption of plans or reports on extension of services; and

(f) other actions that are related to local planning.

(5) The department and board are exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when authorizing the following actions related to agricultural or grazing leases under Title 77, chapter 6, part 1:

(a) the repair, maintenance, or replacement of infrastructure;

(b) water developments that have a de minimis impact on the environment, including but not limited to placement of stockwater tanks and pipeline; and

(c) routine herbicide applications.

History: En. Sec. 2, Ch. 223, L. 1999; amd. Sec. 1, Ch. 478, L. 2001; amd. Sec. 1, Ch. 147, L. 2003; amd. Sec. 3, Ch. 318, L. 2003; amd. Sec. 2, Ch. 239, L. 2009; amd. Sec. 10, Ch. 359, L. 2011; amd. Sec. 1, Ch. 63, L. 2023.

77-1-122. Environmental review of energy development projects on state land. (1) Except as provided in subsection (2), the scope of any environmental review under Title 75, chapter 1, parts 1 and 2, for a proposed action on state land is limited to the impacts of the proposed action within the boundaries of the state land parcel or parcels in which the proposed state action is taking place if the:

(a) board or the department, pursuant to this title, is proposing a sale or exchange or to issue a right-of-way, easement, placement of improvement, lease, license, or permit or if the department or board is acting in response to an application for an authorization for a proposal; and

(b) state action is part of a larger energy development project that includes private or federal land that is not subject to permitting or certification under Title 75 or Title 82.

(2) If more than 33% of the total land area physically occupied by the proposed energy development project provided for in subsection (1) is state land, then the scope of the environmental review under Title 75, chapter 1, parts 1 and 2, for the proposed action must include the total land area, including federal and private land, that will be occupied by the proposed energy development project.

History: En. Sec. 1, Ch. 239, L. 2009.

77-1-123 and 77-1-124 reserved.

77-1-125. Liability for unauthorized installation or construction of facility or structure on state trust land — penalty. (1) A person, other than the lessee of the affected state trust land, may not, after September 30, 1997:

(a) install or construct a road, pipeline, ditch, utility line, fence, building, or other facility or structure on state trust land without obtaining an easement, lease, license, or other written permission of the department; or

(b) disturb state trust land in anticipation of the installation or construction of the facility or structure.

(2) A person who violates subsection (1) is liable to the department for a civil penalty in an amount determined by the board. The penalty may be an amount up to three times the full market value of the land disturbed or affected or $500, whichever is greater.

(3) In addition to the penalty provided for in subsection (2), a person who installs or constructs a facility or structure on state trust land without permission is liable for any permanent damage to the state trust land and may be required to remove the facility or structure and to reclaim the disturbed land to the satisfaction of the department or to pay the department's cost of removal and reclamation.

(4) If the department allows the facility or structure to remain on state trust land, the department shall also require payment of full market value of any easement, lease, or license required for the facility or structure.

(5) The penalties provided in this section do not apply to the lessee of the affected state trust land. The remedies and penalties provided in a state trust easement, lease, or license and the statutes and regulations under which the easement, lease, or license was entered are the exclusive remedies and penalties that may be applied to a lessee.

(6) The penalties provided in this section do not apply to persons who have inadvertently installed or constructed pipelines or utility lines within 20 feet of the easement boundaries granted by the state.

(7) The penalties provided in this section do not apply to facilities or structures installed on lands acquired by the state through exchange or purchase that were authorized with the permission of the previous landowner or through authority granted by an appropriate government agency.

History: En. Sec. 1, Ch. 460, L. 1997; amd. Sec. 21, Ch. 275, L. 2017.

77-1-126. Notice of noncompliance. (1) When the department finds that noxious weeds on leased state land or on state land subject to a license or permit have not been controlled as required by 7-22-2116, the lease, the license, or the permit, the department shall contact the lessee, licensee, or permittee and require that a weed management and control program be implemented. The lessee, licensee, or permittee may request that an inspection of the state land be made with department staff. The department shall seek voluntary compliance with a noxious weed management and control program for the state lands prior to issuing a notice of noncompliance. If the lessee, licensee, or permittee fails to implement a weed management and control program when directed by the department, the department shall notify the lessee, licensee, or permittee by mail of the noncompliance. The notice must specify:

(a) the basis for the determination of noncompliance;

(b) the geographic location of the area of noncompliance by legal description or other reasonably identifiable description;

(c) measures to be undertaken in order to comply with the weed control responsibilities of the lease, license, or permit;

(d) a reasonable period of time, not less than 15 days, in which compliance measures must be initiated;

(e) the right of the person to request, within 15 days, an administrative hearing as provided by 77-1-128; and

(f) the right of the person to request an extension if the measures in subsection (1)(c) cannot be implemented due to climatic or growing conditions.

(2) At least 2 weeks prior to sending a notice of noncompliance, the department shall send by certified mail to the lessee, licensee, or permittee a final notice that the weed management and control program has not been implemented.

(3) This section may not be construed to interfere with the right of the owner of property adjacent to a navigable river or stream to control noxious weeds on the land adjacent to the navigable river or stream.

History: En. Sec. 2, Ch. 164, L. 2007; amd. Sec. 7, Ch. 472, L. 2009.

77-1-127. Department authorized to control weeds — billing for weed control. (1) If the lessee, licensee, or permittee fails to take corrective action or if a request for an administrative hearing is not made within the time specified in the notice, the department may enter state land covered by the lease, license, or permit and institute appropriate weed control measures. The department may enter into an agreement with a commercial applicator, as defined in 80-8-102, or with the appropriate weed management district organized under 7-22-2102 to control the weeds. The commercial applicator or the weed management district shall agree to carry any insurance required by the department.

(2) The department shall submit a bill to the lessee, licensee, or permittee itemizing the hours of labor, material, and equipment time and listing the actual total cost incurred by the department to take the weed control measures, together with a penalty not exceeding 50% of the total cost. The bill must specify and order a payment due date of 30 days from the date the bill is sent. If payment is not received within 30 days, the department may cancel the lease, license, or permit. Money recovered under this section must be placed in the trust land administration account established in 77-1-108, except that penalties collected must be distributed annually to the trusts for the lands on which the weed control action was taken.

(3) If a person receiving an order to take corrective action requests an administrative hearing, the department may not institute control measures until the matter is finally resolved, except in case of an emergency. In an emergency, the person is liable for department costs allowed by this section only to the extent determined appropriate by the director or the court that finally resolves the matter.

(4) This section may not be construed to interfere with the right of the owner of property adjacent to a navigable river or stream to control noxious weeds on the land adjacent to the navigable river or stream.

History: En. Sec. 3, Ch. 164, L. 2007; amd. Sec. 10, Ch. 465, L. 2009; amd. Sec. 8, Ch. 472, L. 2009.

77-1-128. Administrative hearings. (1) A person adversely affected by any notice, action, or order of the department may, within the timeframe stated in the notice of noncompliance provided for in 77-1-126, request an administrative hearing before the director or the director's designee. The director or the director's designee shall hold a hearing within 30 days of the request. Participants may be represented by legal counsel. The director or the director's designee shall make a record of the proceeding and enter an order and findings within 30 days after the hearing.

(2) Within 30 days after the director or the director's designee renders an order and findings, the person adversely affected may file a petition in district court requesting that the order and findings be set aside or modified. The court may affirm, modify, or set aside the order complained of, in whole or in part.

History: En. Sec. 4, Ch. 164, L. 2007.

77-1-129. Rulemaking authority. The department may adopt rules to implement 77-1-126 through 77-1-128.

History: En. Sec. 5, Ch. 164, L. 2007.

77-1-130. *(Temporary)* **Recognition of historic right-of-way — criteria for right-of-way deed — conditions — fees.** (1) A person or a county may apply to the department for a historic right-of-way deed to provide access to the applicant's private property, to provide continuation of a county road, or to provide for authorization of existing utilities by filing an application with the department by October 1, 2021, on a form prescribed by the department. An application must be accompanied by:

(a) an application fee of $50;

(b) a notarized affidavit:

(i) demonstrating that the applicant or the applicant's predecessor in interest used the right-of-way applied for before 1997 and that the use has continued to the present;

(ii) describing the purpose for which the right-of-way was used before 1997; and

(iii) demonstrating that the historic right-of-way applied for is the right-of-way demonstrated in the evidence provided in subsection (1)(c); and

(c) (i) aerial photographs or images taken by an agency of the United States demonstrating use of the right-of-way applied for; or

(ii) other evidence of the use of the right-of-way applied for.

(2) The department shall review an application and other evidence submitted pursuant to subsection (1) and shall issue a historic right-of-way deed in the name of the applicant if:

(a) the applicant pays the application fee provided in subsection (1)(a) and the full market value of the historic right-of-way as provided in subsection (4);

(b) the applicant has shown by substantial evidence the matters required in subsections (1)(b) and (1)(c)(i) or (1)(c)(ii);

(c) the department has, if necessary, made a field inspection of the right-of-way applied for; and

(d) the deed is approved by the board.

(3) A historic right-of-way deed issued in the name of the applicant must contain the description of the property of the applicant to which it is appurtenant as provided in the application, and the right-of-way must thereafter be considered appurtenant to that dominant estate. A deed may be assigned by the applicant to the applicant's successor in interest with the approval of the department. The department may not withhold approval for any reason other than that the use of the historic right-of-way is contrary to subsection (5).

(4) (a) At the time of issuing the historic right-of-way deed, the department shall collect from the applicant the full market value of the estate or interest disposed of for the historic right-of-way.

(b) The amount collected pursuant to subsection (4)(a) must be deposited in the appropriate trust fund established for receipt of income from the land over which a historic right-of-way is granted.

(5) If application is made in accordance with this section, a historic right-of-way deed must be issued by the department, subject to the approval of the board, on the following terms:

(a) the right-of-way is only for the minimum width necessary, as negotiated by the department and the applicant; and

(b) the right-of-way is only for the physical condition of the road or utility facilities existing on the date the historic right-of-way deed is issued by the department.

(6) Issuance of a historic right-of-way deed pursuant to this section is exempt from the requirements of Title 22, chapter 3, part 4, and Title 75, chapter 1, parts 1 and 2.

(7) The survey requirements of 77-2-102 may be waived by the department for the issuance of a historic right-of-way deed if the department determines that there is sufficient information available to define the boundaries of the right-of-way for the purposes of recording the easement.

(8) The department may attach conditions to a historic right-of-way deed necessary to ensure compliance with this chapter.

(9) For the purposes of this section, "historic right-of-way deed" means a document issued by the department granting to the applicant a nonexclusive easement over state land. *(Terminates October 1, 2031—secs. 2 through 7, Ch. 325, L. 2015.)*

History: En. Sec. 1, Ch. 461, L. 1997; amd. Sec. 1, Ch. 270, L. 2001; amd. Sec. 1, Ch. 57, L. 2005; amd. Sec. 1, Ch. 325, L. 2011; amd. Sec. 1, Ch. 325, L. 2015; amd. Sec. 1, Ch. 411, L. 2017.

Cross-References

Antiquities, Title 22, ch. 3, part 4.
General provisions, Title 75, ch. 1, part 1.
Environmental impact statements, Title 75, ch. 1, part 2.
Application for easement, 77-2-102.

77-1-131. *(Temporary)* **State lands historic right-of-way account.** There is a state lands historic right-of-way account in the state special revenue fund. The application fee collected by the department pursuant to 77-1-130(1)(a) must be deposited in the account. Money in the account must be used for the expenses of the department in administering 77-1-130. Money in the account on the termination date of the account must be deposited in the general fund. *(Terminates October 1, 2031—secs. 2 through 5, Ch. 325, L. 2015.)*

History: En. Sec. 2, Ch. 461, L. 1997; amd. Sec. 24, Ch. 389, L. 1999.

77-1-132. Earnings reserve account. (1) There is an earnings reserve account in the state special revenue fund.

(2) Funds are deposited in the earnings reserve account in accordance with the provisions of 77-1-108(4)(a) and must be accounted for by trust.

(3) The balance of this account may not exceed two times the appropriation to the trust land administration account for the last completed fiscal year prior to the legislative session that will appropriate money for the next biennium.

(4) The earnings reserve account must be invested. Any interest earned must be deposited in the earnings reserve account in proportionate share to each fund's contribution to the account.

History: En. Sec. 23, Ch. 465, L. 2009.

77-1-133 reserved.

77-1-134. Irrigation structures, utility structures, and bridges of formerly taxable land — water rights. (1) If an irrigation structure, a utility structure, or a bridge was placed on land that consists of the bed of a navigable river or stream, the irrigation structure, utility structure, or bridge remains the property of the original owner or the original owner's successors in interest or assignees. Subject to 77-1-1112(10), access to the irrigation structures, utility structures, and bridges described in this section for the purposes of operation, maintenance, repair, enhancement, or improvement may not be impeded by the state.

(2) Subject to 77-1-1112(10), the change of designation of the bed of a navigable river or stream from a taxable to a nontaxable status may not interfere with or impede the exercise of a water right, including a livestock watering right for which a claim was not required to be filed pursuant to 85-2-212 and 85-2-222.

History: En. Sec. 4, Ch. 472, L. 2009; amd. Sec. 11, Ch. 359, L. 2011.

77-1-135. Terminated. Sec. 7, Ch. 380, L. 1999.

History: En. Sec. 1, Ch. 380, L. 1999.

77-1-136. Terminated. Sec. 7, Ch. 380, L. 1999.

History: En. Sec. 2, Ch. 380, L. 1999.

77-1-137. Terminated. Sec. 7, Ch. 380, L. 1999.

History: En. Sec. 3, Ch. 380, L. 1999.

77-1-138. Terminated. Sec. 7, Ch. 380, L. 1999.

History: En. Sec. 4, Ch. 380, L. 1999.

77-1-139. Terminated. Sec. 7, Ch. 380, L. 1999.

History: En. Sec. 5, Ch. 380, L. 1999.

77-1-140 reserved.

77-1-141. Determination of date of delivery. The date of delivery for a lease, license, permit, or agreement issued by the board or department under this title or under a rule implementing this title or for a document or payment required by the terms of the lease, license, permit, or agreement is:

(1) for mailing by means of the United States postal service, the date of the postmark stamped on the cover in which the document or payment is transmitted; or

(2) for delivery by means other than by the United States postal service or if there is no postmark stamped on a mailing delivered by the United States postal service, the date of actual physical receipt by the department.

History: En. Sec. 1, Ch. 67, L. 2001.

77-1-142 through 77-1-144 reserved.

77-1-145. Enabling Act enforcement — findings. (1) The legislature finds that:

(a) section 13 of The Enabling Act requires that 5% of the proceeds from public lands in Montana sold by the United States, after deduction of expenses, must be paid to the state for the support of the common schools;

(b) the United States incorrectly interprets The Enabling Act provision cited in subsection (1)(a) to only include the sale of lands managed by the secretary of the interior; and

(c) the United States owes Montana 5% of the proceeds of all public land in Montana sold by the United States government since November 8, 1889.

(2) The attorney general shall pursue, to the extent feasible using available state resources, payment of the funds owed to Montana pursuant to subsection (1).

(3) Any money paid to the state pursuant to this section must be deposited in the permanent fund for the support of common schools as referenced in section 13 of The Enabling Act.

History: En. Sec. 1, Ch. 345, L. 2015.

Part 2
Board of Land Commissioners

77-1-201. Board — meetings and officers. (1) The board shall hold regular meetings at least once each month and may hold special meetings whenever considered necessary upon call of the president or a majority of the members.

(2) Three members of the board constitute a quorum for the transaction of business. The governor is the president of the board. In the governor's absence, the lieutenant governor shall preside, and in the lieutenant governor's absence, the superintendent of public instruction shall preside.

History: En. Sec. 4, Ch. 60, L. 1927; re-en. Sec. 1805.4, R.C.M. 1935; amd. Sec. 4, Ch. 428, L. 1973; R.C.M. 1947, 81-104; amd. Sec. 2540, Ch. 56, L. 2009.

Cross-References

Constitutional establishment and membership of Board, Art. X, sec. 4, Mont. Const.
Governor as member of Board, 2-15-201.
Secretary of State as member of Board, 2-15-401.
Attorney General as member of Board, 2-15-501.

77-1-202. Powers and duties of board. (1) The board shall exercise general authority, direction, and control over the care, management, and disposition of state lands and, subject to the investment authority of the board of investments, the funds arising from the leasing, use, sale, and disposition of those lands or otherwise coming under its administration. In the exercise of these powers, the guiding principle is that these lands and funds are held in trust for the support of education and for the attainment of other worthy objects helpful to the well-being of the people of this state as provided in The Enabling Act. The board shall administer this trust to:

(a) secure the largest measure of legitimate and reasonable advantage to the state; and

(b) provide for the long-term financial support of education.

(2) It is consistent with the powers and duties provided in subsection (1) that the people are entitled to general recreational use of state lands to the extent that the trusts are compensated for the value of the recreation.

(3) When acquiring land for the state, the board shall determine the value of the land after an appraisal by a qualified land appraiser.

History: En. Sec. 3, Ch. 60, L. 1927; re-en. Sec. 1805.3, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1969; amd. Sec. 1, Ch. 67, L. 1973; amd. Sec. 3, Ch. 428, L. 1973; R.C.M. 1947, 81-103(part); amd. Sec. 1, Ch. 136, L. 1983; amd. Sec. 3, Ch. 609, L. 1991; amd. Sec. 1, Ch. 222, L. 1995; amd. Sec. 1, Ch. 335, L. 2005.

Cross-References

Support of education, Art. X, sec. 2, 4, 5, and 11, Mont. Const.
Disposition of public land trust, Art. X, sec. 11, Mont. Const.
Investment authority of Board of Investments, Title 17, ch. 6, part 2.
Interest and income money to schools — deposit by Board, 20-9-341.
Interest and income money part of state equalization aid to schools, 20-9-343.
Board to prescribe rules for appraisal, 77-1-206.
Classification of state lands, 77-1-402.
Exchange or sale of state lands within Indian reservations, 77-2-201.
Limitation on overriding royalties and payments out of production allowed — state oil and gas leases, 77-3-444.

77-1-203. Multiple-use management. (1) The board shall manage state lands under the multiple-use management concept defined as the management of all the various resources of the state lands so that:

(a) they are utilized in that combination best meeting the needs of the people and the beneficiaries of the trust, making the most judicious use of the land for some or all of those

resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions and realizing that some land may be used for less than all of the resources; and

(b) harmonious and coordinated management of the various resources, each with the other, will result without impairment of the productivity of the land, with consideration being given to the relative values of the various resources.

(2) If a parcel of state land in one class has other multiple uses or resource values which are of such significance that they do not warrant classification for the value, the land shall, nevertheless, be managed insofar as is possible to maintain or enhance these multiple-use values.

(3) State lands, including those lands that are leased primarily for other purposes, are open to general recreational use subject to legal access and to closures and restrictions pursuant to rules adopted under 77-1-804.

(4) The department shall include in all new or renewal leases and licenses a provision that leased lands may not be closed at any time to the public for general recreational purposes without advance written permission of the department.

History: **(1)En. Sec. 3, Ch. 60, L. 1927; re-en. Sec. 1805.3, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1969; amd. Sec. 1, Ch. 67, L. 1973; amd. Sec. 3, Ch. 428, L. 1973; Sec. 81-103, R.C.M. 1947; (2)En. Sec. 16, Ch. 60, L. 1927; amd. Sec. 8, Ch. 428, L. 1973; amd. Sec. 1, Ch. 8, L. 1974; Sec. 81-302, R.C.M. 1947; R.C.M. 1947, 81-103(part), 81-302(part); amd. Sec. 6, Ch. 15, L. 1979; amd. Sec. 4, Ch. 609, L. 1991.**

Cross-References

Classification of state lands, 77-1-402.

77-1-204. Power to sell, lease, or exchange certain state trust lands. (1) The board is authorized to lease state trust lands for uses other than agriculture, grazing, timber harvest, or mineral production under terms and conditions that best fulfill the duties of the board as specified in 77-1-202 and 77-1-203. The lease period for these leases, except for power and school site leases, may not be for longer than 99 years.

(2) The board may sell, exchange, or lease lands under its jurisdiction by virtue of 77-1-214 when, in the board's judgment, it is advantageous to the state to do so in the highest orderly development and management of state trust land. The sale, lease, or exchange may not be contrary to the terms of any contract that the board has entered into.

History: **(1)En. 81-103.1 by Sec. 1, Ch. 135, L. 1974; Sec. 81-103.1, R.C.M. 1947; (2)En. Sec. 5, Ch. 159, L. 1937; Sec. 81-1107, R.C.M. 1947; R.C.M. 1947, 81-103.1, 81-1107; amd. Sec. 1, Ch. 488, L. 1985; amd. Sec. 5, Ch. 609, L. 1991; amd. Sec. 13, Ch. 404, L. 2003.**

Cross-References

Authority to lease and exchange state lands, Art. X, sec. 4, Mont. Const.

77-1-205. Board to correct errors. The board shall correct errors, mistakes, and misdescriptions in deeds and conveyances of property to the state. Deeds or other conveyances shall be made and executed in the manner provided for the execution of patents by the state. The board may also correct errors in leases, certificates of purchase, patents, and other conveyances of property from the state upon satisfactory proof that an error or mistake has been made.

History: **En. Sec. 115, Ch. 60, L. 1927; re-en. Sec. 1805.115, R.C.M. 1935; Sec. 81-1108, R.C.M. 1947; redes. 81-106 and amd. by Sec. 73, Ch. 428, L. 1973; R.C.M. 1947, 81-106.**

Cross-References

Refunding of money paid by mistake, 77-1-303.

Execution of patents by state, 77-2-342.

77-1-206. Board to prescribe further rules for appraisal. The board shall prescribe such further rules for the appraisal of state lands as it may deem necessary, not inconsistent with the provisions of this title or the state constitution.

History: **En. Sec. 18, Ch. 60, L. 1927; re-en. Sec. 1805.18, R.C.M. 1935; R.C.M. 1947, 81-303.**

Cross-References

Adoption of rules governed by Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

77-1-207. Board to defend suits. For the purpose of determining the title to any property seized and taken under the provisions of 77-1-116, the board is hereby authorized and empowered to defend, in the name of the state, any and all actions that may be brought for that purpose and to do and perform all things necessary to protect the interests of the state.

History: En. Sec. 8, p. 49, L. 1893; re-en. Sec. 3567, Pol. C. 1895; re-en. Sec. 2220, Rev. C. 1907; re-en. Sec. 60, Ch. 147, L. 1909; re-en. Sec. 1880, R.C.M. 1921; re-en. Sec. 1880, R.C.M. 1935; R.C.M. 1947, 81-1603.

Cross-References

Actions affecting title to state property — Governor may require Attorney General to appear, 2-15-201.

77-1-208. Cabin site licenses and leases — method of establishing value. (1) The board shall set the annual fee based on full market value for each cabin site and for each licensee or lessee who at any time wishes to continue or assign the license or lease. The fee must attain full market value based on one of the following methods:

(a) appraisal of the cabin site value as determined by the department of revenue. The licensee or lessee has the option to pay the entire fee on March 1 or to divide the fee into two equal payments due March 1 and September 1. The value may be increased or decreased as a result of the statewide reappraisal of property pursuant to 15-7-111. An appeal of a cabin site value determined by the department of revenue must be conducted pursuant to Title 15, chapter 15.

(b) establishing full rental market value through the use of an open competitive bidding process as provided in 77-1-235.

(2) A current licensee or lessee may complete or renew the licensee's or lessee's current lease based on valuation methods provided in subsection (1)(a), or at the end of the lease or license contract, the licensee or lessee may choose to proceed with the valuation option provided in subsection (1)(b).

(3) The board shall set the fee of each initial cabin site license or lease or each current cabin site license or lease of a person who does not choose to retain the license or lease. The initial fee must be based upon a system of competitive bidding. The fee for a person who wishes to retain that license or lease must be determined under the method provided for in subsection (1).

(4) (a) Subject to subsection (4)(b), the board shall follow the procedures set forth in 77-6-302, 77-6-303, and 77-6-306 for the disposal or valuation of any fixtures or improvements placed upon the property by the then-current licensee or lessee and shall require the subsequent licensee or lessee whose bid is accepted by the board to purchase those fixtures or improvements in the manner required by the board.

(b) (i) A subsequent licensee or lessee may not take occupancy unless the license or lease contract and the sale of improvements have been finalized. If a winning bidder has been identified and the transaction for the sale of the improvements is in process, the current lessee shall pay a prorated lease fee based on the current lease until the date that the sale of the improvements is finalized.

(ii) The valuation of improvements must be applicable to residential property inclusive of all improvements.

(iii) A licensee or lessee may assign or rent any improvements.

(iv) Within 3 years of canceling, terminating, or abandoning a cabin site lease, the owner of the improvements shall sell the improvements, remove the improvements, or transfer ownership of the improvements to the state. If ownership is transferred to the state, proceeds from the sale of the improvements must be paid to the owner who transferred the improvements. The board shall set the conditions of the sale of transferred improvements in order to sell the improvements in an expedient manner.

History: En. Sec. 1, Ch. 459, L. 1983; amd. Sec. 1, Ch. 705, L. 1989; amd. Sec. 1, Ch. 586, L. 1993; amd. Sec. 9, Ch. 463, L. 1997; amd. Sec. 1, Ch. 11, L. 2001; amd. Sec. 2, Ch. 270, L. 2001; amd. Sec. 3, Ch. 401, L. 2011; amd. Sec. 30, Ch. 361, L. 2015.

77-1-209. Leasing rules. The board may prescribe rules relating to the leasing of state lands as it considers necessary in order that the use and proceeds of these lands may contribute in the highest attainable measure to the purposes for which they are granted to the state of Montana. The rules should prescribe a procedure for setting all fees and rental rates for the use of state lands for any purpose. The procedure should establish provisions for notice, public comment, public hearings, and appeal.

History: En. Sec. 37, Ch. 60, L. 1927; re-en. Sec. 1805.37, R.C.M. 1935; amd. Sec. 24, Ch. 428, L. 1973; R.C.M. 1947, 81-423; MCA 1981, 77-6-104; redes. 77-1-209 by Code Commissioner, 1983; amd. Sec. 11, Ch. 586, L. 1993.

Cross-References

Promulgation of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

77-1-210 reserved.

77-1-211. Acceptance of federal land grants. (1) The board may accept any grant of lands from the United States to the state made in carrying out the provisions of The Enabling Act and also any other grant for any special purpose that may be made by the United States to the state, except as provided in subsection (2).

(2) Legislative approval is required for any acceptance of land by the state of Montana from the United States if the land was acquired by the United States through condemnation procedures.

(3) Notwithstanding any provisions of this title, the board, after consultation with the director of the department of environmental quality, may accept any lands, including buildings, granted to the state by the United States pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq. Legislative approval is not required for acceptance.

History: En. Sec. 113, Ch. 60, L. 1927; re-en. Sec. 1805.113, R.C.M. 1935; amd. Sec. 70, Ch. 428, L. 1973; R.C.M. 1947, 81-1101(part); amd. Sec. 1, Ch. 452, L. 1979; amd. Sec. 2, Ch. 274, L. 1989; amd. Sec. 315, Ch. 418, L. 1995.

Cross-References

Secretary of State to record conveyances to state, 2-15-401.

77-1-212. Acceptance of federal facilities and installations — title in state. The board may, on behalf of the state, accept donations of federal installations, facilities, lands, or properties. All title to the installations or facilities shall be vested in the name of the state for its use. This section does not limit, reduce, or supersede Title 18, chapter 5, part 2.

History: En. Sec. 1, Ch. 252, L. 1965; amd. Sec. 71, Ch. 428, L. 1973; R.C.M. 1947, 81-1101.1.

Cross-References

Secretary of State to record conveyances to state, 2-15-401.

77-1-213. Acceptance of gifts, donations, grants, legacies, and devises to the state. (1) The board is hereby authorized and empowered to accept on behalf of the state from any natural person gifts, donations, grants, legacies, and devises having a value of not less than $250 from each person. All lands passing to the state under these provisions or through the operation of law shall be managed as other state lands, and the rents and earnings shall be applied in accordance with the object and purpose specified by the grantor, subject to all constitutional limitations.

(2) All money realized from the sale of such lands and from other property and all gifts, donations, grants, legacies, and devises made in money or the equivalent of money shall be administered by the board for the benefit of the specific purposes designated by the person from whom they were received and as further regulated by this title. The provisions of this section shall apply to gifts, donations, grants, legacies, and devises already made to the state and now under the administration of the board if not contrary to any specific provisions made therein by the persons from whom they were received.

History: En. Sec. 114, Ch. 60, L. 1927; re-en. Sec. 1805.114, R.C.M. 1935; amd. Sec. 43, Ch. 100, L. 1973; R.C.M. 1947, 81-1102.

Cross-References

Secretary of State to record conveyances to state, 2-15-401.

Escheated real property, 72-14-206.

77-1-214. Donations of land for forestry purposes. The board may accept gifts, donations, or contributions of land suitable for forestry or park purposes and enter into agreements with the federal government or other agencies for acquiring by lease, purchase, or otherwise such lands as in the judgment of the board are desirable for state forests.

History: En. Sec. 1, Ch. 159, L. 1937; amd. Sec. 72, Ch. 428, L. 1973; R.C.M. 1947, 81-1103.

Cross-References

Secretary of State to record conveyances to state, 2-15-401.

77-1-215. Expenditures authorized. When lands are acquired or leased under 77-1-214, the board is hereby authorized to:

(1) make expenditures from any funds not otherwise obligated for the management, development, and utilization of such areas;

(2) sell or otherwise dispose of products from such lands; and

(3) make such rules as may be necessary to carry out the purposes of 77-1-214 through 77-1-217 and 77-1-204(2).

History: En. Sec. 2, Ch. 159, L. 1937; R.C.M. 1947, 81-1104.

Cross-References

Adoption of rules governed by Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

77-1-216. Disposition of revenues and profits. All revenues derived from lands acquired under the provisions of 77-1-214 shall be segregated by the state treasurer for the use of the board in the acquisition, management, development, and use of such lands until all obligations incurred have been paid in full. Thereafter, 50% of all net profits accruing from the administration of such lands shall be applicable for such purposes as the legislature may prescribe and 50% shall be paid into the school fund of the county in which lands are located.

History: En. Sec. 3, Ch. 159, L. 1937; R.C.M. 1947, 81-1105.

Cross-References

School funds from state lands, Art. X, sec. 2 through 5, and 11, Mont. Const.
County schools equalization revenue, 20-9-331.
Interest and income money, 20-9-341 through 20-9-343.

77-1-217. Payment of certain obligations. Obligations for the acquisition of land incurred by the board under the authority of 77-1-214 shall be paid solely and exclusively from revenues derived from such lands and shall not impose any liability upon the general credit and taxing power of the state.

History: En. Sec. 4, Ch. 159, L. 1937; R.C.M. 1947, 81-1106.

77-1-218. Public school land acquisition account. (1) There is a public school land acquisition account in the state special revenue fund established in 17-2-102. The account must be administered by the department.

(2) Money in the account may be used only for the purpose of purchasing and managing interests in and appurtenances to real property in accordance with 77-1-219.

(3) After deductions are made pursuant to 77-1-109 and 77-1-613, the net interest and income earned on real property and appurtenances purchased with funds from the account must be distributed to the school facility and technology account provided for in 20-9-516.

History: En. Sec. 1, Ch. 485, L. 2009; amd. Sec. 37, Ch. 55, L. 2015.

77-1-219. Public school land purchases — considerations — distributions. (1) The board may request the board of examiners to issue bonds for the purpose of purchasing interests in and appurtenances to real property selected by the board in accordance with the requirements of this section. Upon issuance of the bonds, the board shall purchase the real property and its appurtenances.

(2) Prior to requesting the issuance of bonds under subsection (1), the board shall consider the following:

(a) the income-generating potential of the real property and appurtenances;

(b) the opportunity for sustainable forest management activities and outcomes as described in 76-13-701 and 76-13-702; and

(c) the opportunity for recreational use of the real property and appurtenances consistent with Title 77, chapter 1, part 8.

(3) Prior to requesting the issuance of bonds, the board or the department, at the board's direction, shall complete a cost-benefit analysis of potential real property and appurtenance purchases. This cost-benefit analysis must be made available to the public upon request.

(4) Prior to purchasing any real property and appurtenances, the board shall determine that the benefits of the purchase are significant and that the financial risks are prudent. In order to reach that determination, the board shall examine the purchase of any real property and appurtenances as if the board had a fiduciary duty as a reasonably prudent trustee of a perpetual trust. For the purposes of this section, that duty requires the board to:

(a) discharge its duties with the care, skill, and diligence that a prudent person acting in a similar capacity with the same resources and familiar with similar matters should exercise in the conduct of an enterprise of similar character and aims;

(b) manage the land holdings purchased pursuant to 77-1-218 and this section in accordance with an asset management plan to minimize the risk of loss and maximize the sustained rate of return;

(c) discharge its duties and powers solely in the interest of and for the benefit of the trust; and

(d) discharge its duties subject to the fiduciary standards set forth in 72-38-801.

(5) All interests in real property and appurtenances acquired under this section must be managed pursuant to this title.

History: En. Sec. 2, Ch. 485, L. 2009; amd. Sec. 156, Ch. 264, L. 2013.

77-1-220. Offsetting purchases — proceeds — records. (1) To the extent practical and consistent with the board's powers and duties pursuant to 77-1-202, the board shall offset purchases made pursuant to 77-1-218, 77-1-219, and 77-1-229 by selling an equal amount of land.

(2) Proceeds received from offsetting sales may not be used for:

(a) purchasing additional lands; or

(b) the land banking process under 77-2-361 through 77-2-367.

(3) A separate record of the proceeds received from each sale of land must be maintained.

History: En. Sec. 3, Ch. 485, L. 2009; amd. Sec. 3, Ch. 362, L. 2011.

77-1-221. Repealed. Sec. 315, Ch. 42, L. 1997.

History: En. Sec. 1, Ch. 691, L. 1989.

77-1-222. Repealed. Sec. 74, Ch. 18, L. 1995.

History: En. Sec. 2, Ch. 691, L. 1989.

77-1-223. State trust land report to trust beneficiaries and legislature — contents. (1) The board shall annually prepare a report on state trust lands that summarizes the land held in trust for each beneficiary by land classification.

(2) The report must include the asset value and financial performance of the land held for each beneficiary as calculated using the best available methodology and data.

(3) The board shall provide a copy of the report to the beneficiary of each trust and to the legislature in accordance with 5-11-210 at the end of each fiscal year.

History: En. Sec. 1, Ch. 462, L. 1999; amd. Sec. 1, Ch. 195, L. 2015; amd. Sec. 107, Ch. 261, L. 2021.

77-1-224. Repealed. Sec. 2, Ch. 195, L. 2015.

History: En. Sec. 2, Ch. 462, L. 1999.

77-1-225. Repealed. Sec. 2, Ch. 195, L. 2015.

History: En. Sec. 3, Ch. 462, L. 1999.

77-1-226 and 77-1-227 reserved.

77-1-228. Public land trust acquisition account. (1) There is a public land trust acquisition account in the state special revenue fund established in 17-2-102. Any funds recovered by the state as a result of the claim that PPL Montana, LLC, owes compensation to the state for using state-owned riverbeds from 2000 through 2007 and any interest that accumulates on the funds must be deposited in the account. The account must be administered by the department and is subject to the provisions of Article X, section 11, of the Montana constitution.

(2) Money deposited in the account pursuant to subsection (1) may be used only for costs associated with evaluating potential purchases and for the purpose of purchasing interests in and appurtenances to real property in accordance with 77-1-229. Any interest earned on money deposited in the account must be deposited in the guarantee account provided for in 20-9-622 for distribution to public schools on a monthly basis.

History: En. Sec. 1, Ch. 362, L. 2011.

77-1-229. Public land trust purchases. (1) Subject to legislative appropriation, the board is authorized to evaluate potential purchases and purchase interests in and appurtenances to real property from the proceeds of the account established in 77-1-228 pursuant to the limitations of 77-1-220, 77-1-228, and this section. Transactional costs may not exceed 7% of the purchase price of acquired property. Prior to purchasing interests in and appurtenances to real property, the board shall consider the following:

(a) the income-generating potential of the real property and appurtenances;

(b) the opportunity for sustainable forest management activities and outcomes as described in 76-13-701 and 76-13-702;

(c) the opportunity for recreational use of the real property and appurtenances consistent with Title 77, chapter 1, part 8; and

(d) the cost-benefits of potential real property and appurtenance purchases. This cost-benefit analysis must be made available to the public upon request.

(2) Prior to purchasing any real property and appurtenances, the board shall determine that the benefits of the purchase are significant and outweigh the financial risks. In order to reach that determination, the board shall examine the purchase of any real property and appurtenances as if the board had a fiduciary duty as a reasonably prudent trustee of a perpetual trust. For the purposes of this section, that duty requires the board to:

(a) discharge its duties with the care, skill, and diligence that a prudent person acting in a similar capacity with the same resources and familiar with similar matters should exercise in the conduct of an enterprise of similar character and aims;

(b) manage the land holdings purchased pursuant to this section in accordance with an asset management plan to minimize the risk of loss and maximize the sustained rate of return;

(c) discharge its duties and powers solely in the interest of and for the benefit of the public land trust;

(d) discharge its duties subject to the fiduciary standards set forth in 72-38-801; and

(e) determine the potential for job creation.

(3) All interests in real property and appurtenances acquired under this section must be managed pursuant to this title and are subject to the provisions of Article X, section 11, of the Montana constitution.

(4) After deductions for administrative costs pursuant to 77-1-109, the net interest and income earned on real property and appurtenances purchased with funds from the account established in 77-1-228 must be distributed to the guarantee account provided for in 20-9-622 for distribution to public schools.

History: En. Sec. 2, Ch. 362, L. 2011; amd. Sec. 157, Ch. 264, L. 2013.

77-1-230 through 77-1-234 reserved.

77-1-235. Alternative rental market valuation — open competitive bidding process — rules. (1) (a) In order to establish full rental market value, the board shall establish an open competitive bidding process for all vacant cabin site properties. Except as provided in subsection (1)(c), the minimum bid must be initially set at 2% of the most recent cabin site appraisal value as determined by the department of revenue.

(b) (i) The board shall, within 180 days from the date that a cabin site property becomes vacant, put that site up for open competitive bidding.

(ii) In providing notice of the open competitive bidding process, the board shall notify prospective bidders that a bidder other than the current lessee or licensee is obligated to purchase the improvements pursuant to 77-1-208(4) if that bidder offers the highest bid.

(iii) A lease or license term for a bidder that offers the highest bid and acquires a lease or license must be for a minimum period of 15 years.

(iv) The fee for each subsequent year must be adjusted using the average annual consumer price index as published by the U.S. bureau of labor statistics.

(c) If pursuant to subsection (1)(a) the board does not receive the minimum bid within 180 days, the board may reduce the bid incrementally until a bid is received.

(2) Subject to 77-1-236, a lessee or licensee may voluntarily put the lessee's or licensee's cabin site up for open competitive bid as provided in subsection (1) of this section. A lessee choosing to voluntarily place a cabin site lease up for competitive bid is not entitled to a preference right to meet the high bid. Prior to the open competitive bidding process, the board shall follow the procedures provided in 77-1-208(3) to establish the market value of improvements.

(3) By January 1, 2012, the board shall adopt rules to ensure that:

(a) the open competitive bidding process authorized pursuant to this section is orderly and consistent with the board's constitutional fiduciary duties and that the number of leased cabin or home sites or city or town lots made available for competitive bid at any given time is consistent with the board's constitutional fiduciary duty of attaining full rental market value; and

(b) the information used to determine the rental market percentage pursuant to this section is posted on the department's website and periodically updated.

History: En. Sec. 1, Ch. 401, L. 2011.

77-1-236. Rental market valuation lease program — transition — rules. (1) (a) Subject to subsection (2), the board shall offer all existing cabin site lessees or licensees the option of 15-year lease contracts based on the rental market valuation process provided in 77-1-235.

(b) (i) At least three winning bids made pursuant to 77-1-235 must be referenced against the most recent appraised value of the cabin site property by the department of revenue in order to establish a rental market percentage. All rental market percentages that have been determined pursuant to 77-1-235 must be grouped together by geographic location and averaged together to determine a final rental market percentage for each geographic location. If there are not three winning bids in any one geographic location, then three bids from similar locations may be averaged to establish a rental market percentage.

(ii) The final rental market percentage determined for each geographic location pursuant to this subsection (1)(b) must be applied to the department of revenue's most recent appraised value for each cabin site property in that location that did not go through the open competitive bidding process to determine the initial lease amount for each cabin site property.

(c) If no properties in a particular geographic location go through an open competitive bidding process, the most applicable comparable location, as determined based on professional appraisal standards, must be chosen and the final rental market percentage must be applied as provided in subsection (1)(b).

(2) The lease amount for the first year must be set as provided in subsection (1). The annual lease rental fee for each subsequent year must be adjusted using the average annual consumer price index as published by the U.S. bureau of labor statistics.

(3) By January 1, 2012, the board shall adopt rules for the orderly transition for cabin site lessees or licensees who have chosen the lease option pursuant to subsection (1) that is consistent with the board's constitutional fiduciary duty of attaining full rental market value.

(4) Nothing in this chapter prevents:

(a) an existing lessee or licensee from completing or renewing the lessee's or licensee's current lease or license based on existing methods of valuation as provided in 77-1-208; or

(b) a lessee or licensee that has abandoned a lease or license from bidding on the abandoned lease or license.

History: En. Sec. 2, Ch. 401, L. 2011.

Part 3
Department of Natural Resources and Conservation

Part Cross-References

Cooperative agreements with district weed boards, 7-22-2151.

77-1-301. Powers and duties of the department. (1) Under the direction of the board, the department has charge of the selecting, exchange, classification, appraisal, leasing, management, sale, or other disposition of the state lands. It shall perform such other duties the board directs, the purpose of the department demands, or the statutes require.

(2) It shall collect and receive all moneys payable to the state through its office as fees, rentals, royalties, interest, penalties, or payments on mortgages or lands purchased from the state or derived from any other source. It shall issue a receipt for each cash payment or whenever requested by the payer.

History: En. Sec. 8, Ch. 60, L. 1927; re-en. Sec. 1805.8, R.C.M. 1935; amd. Sec. 2, Ch. 26, L. 1971; Sec. 81-204, R.C.M. 1947; redes. 81-105 and amd. by Sec. 5, Ch. 428, L. 1973; R.C.M. 1947, 81-105.

Cross-References

Duty to identify, protect, and develop heritage properties and paleontological remains on state lands, 22-3-424.

Identification and acquisition of railroad rights-of-way by Department — identification of railroad lines for rehabilitation, 60-11-111.

Transportation of coniferous trees — Department authority, 76-13-601.

77-1-302. Setting fees. The department may prescribe fees, with the approval of the board, for the issuance, filing, or making of a copy of any instrument or for any other service.

History: En. Sec. 120, Ch. 60, L. 1927; re-en. Sec. 1805.120, R.C.M. 1935; amd. Sec. 19, Ch. 121, L. 1965; amd. Sec. 11, Ch. 22, L. 1971; Sec. 81-1113, R.C.M. 1947; redes. 81-108 and amd. by Sec. 76, Ch. 428, L. 1973; R.C.M. 1947, 81-108.

77-1-303. Refunding of money paid by mistake. If any money is erroneously paid to the state on any permit, lease, certificate of purchase, patent, loan, or in any other transaction, the department shall refund that money to the person entitled to it from the proper fund.

History: En. Sec. 116, Ch. 60, L. 1927; re-en. Sec. 1805.116, R.C.M. 1935; Sec. 81-1109, R.C.M. 1947; redes. 81-107 and amd. by Sec. 74, Ch. 428, L. 1973; R.C.M. 1947, 81-107.

77-1-304. Selection and location of lands granted by United States. Under the general direction of the board and as rapidly as the appropriations for the work will permit, the department shall select and locate all lands granted to this state by the United States for any purpose and not located by the grant itself. It shall also select and locate lands in lieu of all those lands in sections 16 and 36 and in the other federal land grants which for any reason have been lost to the state. All selections shall as far as possible be in legal subdivisions. In the selection and location of these lands, careful attention shall be given to the water available and which may be appropriated for these lands for domestic use, livestock, and irrigation.

History: En. Sec. 15, Ch. 60, L. 1927; re-en. Sec. 1805.15, R.C.M. 1935; amd. Sec. 7, Ch. 428, L. 1973; R.C.M. 1947, 81-301; amd. Sec. 1, Ch. 286, L. 1985.

Cross-References

Appropriations, permits, and certificates of water rights, Title 85, ch. 2, part 3.

Part 4
Classification of State Lands

77-1-401. Classes of land. The state lands are classified as follows:

(1) Class 1—lands which are principally valuable for grazing purposes;

(2) Class 2—lands which are principally valuable for the timber that is on them or for the growing of timber or for watershed protection;

(3) Class 3—lands which are principally valuable for the production of crops;

(4) Class 4—lands which are principally valuable for uses other than grazing, crop production, timber production, or watershed protection.

History: En. Sec. 16, Ch. 60, L. 1927; re-en. Sec. 1805.16, R.C.M. 1935; amd. Sec. 8, Ch. 428, L. 1973; amd. Sec. 1, Ch. 8, L. 1974; R.C.M. 1947, 81-302(1).

Cross-References

Classification required, Art. X, sec. 11, Mont. Const.

77-1-402. Basis for classification or reclassification. (1) The classification or reclassification shall be so made as to place state land in the class which best accomplishes the powers and duties of the board as specified in 77-1-202 and 77-1-203. When state lands are classified or reclassified in accordance with these duties and responsibilities, special attention shall be paid to the capability of the land to support an actual or proposed land use authorized by each classification.

(2) It is the duty of the department to classify or reclassify state lands so that no state land will be sold, leased, or used under a different classification from that to which it actually belongs.

History: En. Sec. 16, Ch. 60, L. 1927; re-en. Sec. 1805.16, R.C.M. 1935; amd. Sec. 8, Ch. 428, L. 1973; amd. Sec. 1, Ch. 8, L. 1974; R.C.M. 1947, 81-302(part); amd. Sec. 6, Ch. 609, L. 1991.

77-1-403. Capability inventory. A capability inventory shall be made prior to changing the classification of state lands. Such inventory shall include, when appropriate to the classification, information on soils capability, vegetation, wildlife use, mineral characteristics, public use, aesthetic values, cultural values, surrounding land use, and any other resource, zoning, or planning information which is related to the classification.

History: En. Sec. 16, Ch. 60, L. 1927; re-en. Sec. 1805.16, R.C.M. 1935; amd. Sec. 8, Ch. 428, L. 1973; amd. Sec. 1, Ch. 8, L. 1974; R.C.M. 1947, 81-302(part).

77-1-404. Records of state lands. All field books, plats, maps, and records of the department shall show the class to which each tract therein belongs and whether it belongs to

the public schools of the state or to a state institution or other entity according to the grant or instrument by which title to the land has passed to the state. They shall also show whether or not the coal or other minerals in the land are reserved by the United States and shall contain any other information the department considers necessary.

History: En. Sec. 16, Ch. 60, L. 1927; re-en. Sec. 1805.16, R.C.M. 1935; amd. Sec. 8, Ch. 428, L. 1973; amd. Sec. 1, Ch. 8, L. 1974; R.C.M. 1947, 81-302(4).

77-1-405. Island parks established — development limited. (1) In order to retain the integrity of the recreational experience associated with Montana's river and lake islands, development of undisputed state-owned or state-leased island property, which is hereby designated as island parks, including islands designated as state property under 70-18-203, lying within and surrounded by a navigable river, stream, or lake is limited, after April 30, 1997, to:

(a) the installation of minimal signage indicating that the island is a designated island park in which development has been limited and encouraging the public to help in maintaining the island park's primitive character by packing out trash;

(b) necessary latrine facilities if approved by the state parks and recreation board established in 2-15-3406;

(c) footings or pilings necessary for the construction of a bridge;

(d) oil and gas leasing; and

(e) development of a boat dock at Wild Horse Island state park.

(2) Improvements made to and agricultural operations on state-owned or state-leased island property prior to April 30, 1997, may be maintained or continued, but further development is limited as provided in this section.

(3) Notwithstanding the provisions of 77-1-203 regarding multiple-use management, the legislature finds that the highest and best use of island property administered as school trust land, except islands designated as natural areas pursuant to Title 76, chapter 12, is for recreation and grazing and that those islands should be left in as primitive a state as possible to protect from the loss of potential future revenue that could result from the failure to leave the islands in an undeveloped condition.

(4) For purposes of this section, state ownership or state lease of island property is disputed if the dispute arises before, on, or after April 30, 1997.

History: En. Sec. 1, Ch. 449, L. 1997; amd. Sec. 22, Ch. 235, L. 2013; amd. Sec. 1, Ch. 5, L. 2015.

Cross-References

Island formed in navigable stream, 70-18-203.
Island formed by division of stream, 70-18-205.
Wild and scenic resources, Title 76, ch. 12.
Ownership of certain islands and abandoned riverbeds, 77-1-102.
Recreational use of state lands, Title 77, ch. 1, part 8.
Oil and gas leases, Title 77, ch. 3, part 4.
Agricultural, grazing, and other surface leases, Title 77, ch. 6.
Navigable waters, 85-1-112.

Part 5
State Land Equalization
(Repealed)

77-1-501. Repealed. Sec. 2, Ch. 144, L. 2017.

History: En. Sec. 1, Ch. 235, L. 1967; amd. Sec. 54, Ch. 391, L. 1973; amd. Sec. 77, Ch. 428, L. 1973; R.C.M. 1947, 81-1115; amd. Sec. 140, Ch. 27, Sp. L. November 1993.

77-1-502. Repealed. Sec. 2, Ch. 144, L. 2017.

History: En. Sec. 2, Ch. 235, L. 1967; amd. Sec. 55, Ch. 391, L. 1973; R.C.M. 1947, 81-1116; amd. Sec. 200, Ch. 574, L. 2001.

77-1-503. Repealed. Sec. 2, Ch. 144, L. 2017.

History: En. Sec. 3, Ch. 235, L. 1967; amd. Sec. 56, Ch. 391, L. 1973; amd. Sec. 78, Ch. 428, L. 1973; R.C.M. 1947, 81-1117; amd. Sec. 141, Ch. 27, Sp. L. November 1993; amd. Sec. 201, Ch. 574, L. 2001.

77-1-504. Repealed. Sec. 2, Ch. 144, L. 2017.

History: En. Sec. 4, Ch. 235, L. 1967; amd. Sec. 57, Ch. 391, L. 1973; amd. Sec. 79, Ch. 428, L. 1973; R.C.M. 1947, 81-1118; amd. Sec. 142, Ch. 27, Sp. L. November 1993; amd. Sec. 202, Ch. 574, L. 2001.

77-1-505. Repealed. Sec. 253, Ch. 574, L. 2001.

History: En. Sec. 5, Ch. 235, L. 1967; amd. Sec. 80, Ch. 428, L. 1973; R.C.M. 1947, 81-1119; amd. Sec. 57, Ch. 422, L. 1997.

77-1-506. Repealed. Sec. 253, Ch. 574, L. 2001.

History: En. Sec. 6, Ch. 235, L. 1967; R.C.M. 1947, 81-1120.

77-1-507. Repealed. Sec. 253, Ch. 574, L. 2001.

History: En. Sec. 7, Ch. 235, L. 1967; amd. Sec. 81, Ch. 428, L. 1973; R.C.M. 1947, 81-1121.

77-1-508. Repealed. Sec. 1, Ch. 214, L. 1979.

History: En. Sec. 9, Ch. 60, L. 1927; re-en. Sec. 1805.9, R.C.M. 1935; Sec. 81-205, R.C.M. 1947; redes. 81-1122 and amd. by Sec. 6, Ch. 428, L. 1973; R.C.M. 1947, 81-1122.

Part 6
Development of State Lands

77-1-601. Statement of policy. It is in the best interest and to the great advantage of the state of Montana to seek the highest development of state-owned lands in order that they might be placed to their highest and best use and thereby derive greater revenue for the support of the common schools, the university system, and other institutions benefiting therefrom, and that in so doing the economy of the local community as well as the state is benefited as a result of the impact of such development.

History: En. Sec. 1, Ch. 295, L. 1967; R.C.M. 1947, 81-2401.

Cross-References

Board to direct and control state lands, Art. X, sec. 4, Mont. Const.

Use of coal severance tax proceeds for development, operation, and maintenance of state parks, recreational areas, monuments, or historic sites, 15-35-108.

77-1-602. Repealed. Sec. 26, Ch. 465, L. 2009.

History: En. Sec. 2, Ch. 295, L. 1967; amd. Sec. 106, Ch. 428, L. 1973; R.C.M. 1947, 81-2402; amd. Sec. 36, Ch. 281, L. 1983; amd. Sec. 5, Ch. 14, Sp. L. January 1992; amd. Sec. 31, Ch. 34, L. 2001; amd. Sec. 6, Ch. 247, L. 2007.

77-1-603. Rules. The board shall adopt such rules as it considers necessary and proper for the purpose of carrying out the provisions of this part.

History: En. Sec. 8, Ch. 295, L. 1967; amd. Sec. 112, Ch. 428, L. 1973; R.C.M. 1947, 81-2408.

Cross-References

Adoption of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

77-1-604. Repealed. Sec. 26, Ch. 465, L. 2009.

History: En. Sec. 3, Ch. 295, L. 1967; amd. Sec. 107, Ch. 428, L. 1973; R.C.M. 1947, 81-2403(part); amd. Sec. 1, Ch. 277, L. 1983.

77-1-605. Types of resource developments. (1) The developments contemplated by this part may include those projects that will develop or conserve the various state land resources, including water, both surface and underground, grazing land, agricultural land, timber land, and other land to the benefit of the state. They may also include expenses necessary to perfect title to lands claimed by the state that are suitable for development and other expenses or costs that in the judgment of the board are desirable or necessary in order to develop or increase the value of the land or the revenue from the land.

(2) The department may use funds appropriated from the trust land administration account provided for in 77-1-108 for the purposes of subsection (1).

History: En. Sec. 3, Ch. 295, L. 1967; amd. Sec. 107, Ch. 428, L. 1973; R.C.M. 1947, 81-2403(part); amd. Sec. 11, Ch. 465, L. 2009.

77-1-606. Repealed. Sec. 26, Ch. 465, L. 2009.

History: En. Sec. 4, Ch. 295, L. 1967; amd. Sec. 1, Ch. 180, L. 1973; amd. Sec. 108, Ch. 428, L. 1973; R.C.M. 1947, 81-2404; amd. Sec. 2, Ch. 533, L. 1993; amd. Sec. 7, Ch. 247, L. 2007.

77-1-607. Repealed. Sec. 26, Ch. 465, L. 2009.

History: En. Sec. 5, Ch. 295, L. 1967; amd. Sec. 109, Ch. 428, L. 1973; R.C.M. 1947, 81-2405; amd. Sec. 3, Ch. 533, L. 1993; amd. Sec. 1, Ch. 247, L. 1997.

77-1-608. Repealed. Sec. 26, Ch. 465, L. 2009.

History: En. Sec. 6, Ch. 295, L. 1967; amd. Sec. 110, Ch. 428, L. 1973; R.C.M. 1947, 81-2406; amd. Sec. 4, Ch. 533, L. 1993.

77-1-609. Repealed. Sec. 26, Ch. 465, L. 2009.

History: En. Sec. 7, Ch. 295, L. 1967; amd. Sec. 111, Ch. 428, L. 1973; R.C.M. 1947, 81-2407.

77-1-610 through 77-1-612 reserved.

77-1-613. Administrative costs associated with sale of timber from state trust lands. (1) The department may use funds appropriated from the trust land administration account provided for in 77-1-108 for timber sale preparation, documentation, administration, and contract harvesting costs.

(2) In order to increase the volume of timber sold at the earliest possible time while continuing to meet the requirements of applicable state and federal laws and in order to avoid unnecessary delays and extra costs that would result from increasing its permanent staff, the department may contract for services that will enable achievement of the purposes of this section and that will achieve the highest net return to the trusts.

(3) To maximize overall return to the trusts, the timely salvage of timber must be considered. However, salvage timber sales may not adversely affect the implementation of green timber sales programs conducted pursuant to 77-5-201.

History: En. Sec. 1, Ch. 533, L. 1993; amd. Sec. 1, Ch. 157, L. 1995; amd. Sec. 8, Ch. 247, L. 2007; amd. Sec. 7, Ch. 494, L. 2007; amd. Sec. 12, Ch. 465, L. 2009.

77-1-614 through 77-1-616 reserved.

77-1-617. Management of isolated trust lands — reciprocal access. (1) To facilitate the management of isolated tracts of all classifications of state lands, the department may negotiate reciprocal access agreements that may include easements. For an easement granted pursuant to this subsection, the board may waive all or a portion of the survey requirements of 77-2-102, subject to any conditions that the board may impose.

(2) In granting access, the department is not required to analyze or consider the potential impacts of activities that may occur on private or federal lands in conjunction with or as a result of granting access.

History: En. Sec. 1, Ch. 182, L. 1999.

Part 7
Ownership Records of State-Owned Land

77-1-701. Definitions. When used in this part, unless a different meaning clearly appears from the context, the following definitions apply:

(1) "Ownership record" means the original deed, abstract, and any other instrument signifying state ownership or other interest in real property.

(2) "State agency" means any board, bureau, department, commission, or officer of the state.

(3) "State land" means land held, possessed, or administered by the state by virtue of fee simple title, grant, or deed. This term does not include:

(a) land acquired through investments under the provisions of 17-6-201;

(b) land used by virtue of an interest temporary in nature, such as a lease, license, or permit; or

(c) land used for easements and rights-of-way.

History: En. Sec. 1, Ch. 467, L. 1987; amd. Sec. 3, Ch. 32, L. 1997.

77-1-702. Transfer of records. The secretary of state shall transfer all ownership records on file in the secretary of state's office to the department. The department shall transfer the records of land held or administered by the department of transportation for highway rights-of-way and maintenance to the department of transportation and any remaining ownership records, other than those of state lands, to the state agency administering the interest or property described in the records.

History: En. Sec. 2, Ch. 467, L. 1987; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 2541, Ch. 56, L. 2009.

Cross-References

Duties of Secretary of State, 2-15-401.

Custody and reproduction of records by Secretary of State, 2-15-406.

77-1-703. Filing of ownership records. Except as provided in 77-1-706, state agencies shall file with the department ownership records of state lands held by the agency.

History: En. Sec. 3, Ch. 467, L. 1987.

77-1-704. Department to maintain repository. The department shall provide a secure yet accessible repository for the ownership records of state land.

History: En. Sec. 4, Ch. 467, L. 1987.

77-1-705. Index and verification of ownership records. (1) The department shall establish and maintain a filing system and index of the following information on state land:

(a) legal description of the land;

(b) when the land was acquired or disposed of;

(c) name of the state agency administering or disposing of the land; and

(d) name of the grantor or grantee.

(2) To the extent feasible within available funding and personnel, the department shall:

(a) verify the accuracy of information contained in the ownership records; and

(b) perfect title to state land whenever necessary.

History: En. Sec. 5, Ch. 467, L. 1987.

77-1-706. Treatment of highway lands. The department of transportation is not required to file with the department records of land used for highway rights-of-way and maintenance but is required to file with the department ownership records of state land held for administrative purposes.

History: En. Sec. 6, Ch. 467, L. 1987; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 316, Ch. 418, L. 1995.

77-1-707. Rules. The department may adopt rules for implementing and administering this part concerning transfer and filing of ownership records.

History: En. Sec. 7, Ch. 467, L. 1987; amd. Sec. 317, Ch. 418, L. 1995.

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

Part 8
Recreational Use of State Lands

77-1-801. *(Temporary)* **Recreational use license required to use state lands for general recreational purposes — penalty — exemption.** (1) Except as provided in subsection (2), a person 12 years of age or older shall obtain an annual recreational use license pursuant to 77-1-802 to use state lands, as defined in 77-1-101, for general recreational purposes.

(2) If the department and the department of fish, wildlife, and parks consent to and sign an agreement for general recreational use pursuant to 77-1-815, a person is only required to obtain a conservation license for general recreational use of legally accessible state trust land.

(3) A person shall, on the request of a peace officer or fish and game warden, present for inspection the person's conservation license.

(4) A person found in violation of this section pertaining to the use of state trust land:

(a) for a first offense, shall be given a warning;

(b) for a second offense, is guilty of a misdemeanor and shall be fined not less than twice the cost of a conservation license; and

(c) for a third offense, is guilty of a misdemeanor and shall be fined not more than $500.

(Void on occurrence of contingency—sec. 8, Ch. 596, L. 2003.)

77-1-801. *(Effective on occurrence of contingency)* **Recreational use license required to use state lands for general recreational purposes — penalty.** (1) A person 12 years of age or older shall obtain an annual recreational use license pursuant to 77-1-802 to use state lands, as defined in 77-1-101, for general recreational purposes.

(2) A person shall, upon the request of a peace officer or fish and game warden, present for inspection the person's recreational use license.

(3) A person found in violation of subsection (1) or (2) pertaining to the use of state trust land:

(a) for first offense, shall be given a warning;

(b) for second offense, is guilty of a misdemeanor and shall be fined not less than twice the cost of a recreational use license; and

(c) for a third offense, is guilty of a misdemeanor and shall be fined not more than $500.

History: **En. Sec. 11, Ch. 609, L. 1991; amd. Sec. 4, Ch. 596, L. 2003; amd. Sec. 2542, Ch. 56, L. 2009; amd. Sec. 5, Ch. 507, L. 2023.**

Compiler's Comments

Contingent Voidness: Section 8, Ch. 596, L. 2003, provided: "(1) If the department of natural resources and conservation and the department of fish, wildlife, and parks do not sign an agreement to compensate state trust land beneficiaries for the use and impacts associated with hunting, fishing, and trapping on state trust land by [the effective date of this act] [effective March 1, 2004], then [this act] is void. The department of natural resources and conservation shall notify the code commissioner of the failure to reach an agreement. [An agreement was entered into effective December 8, 2003.]

(2) (a) If an agreement between the department of natural resources and conservation and the department of fish, wildlife, and parks to compensate state trust land beneficiaries for the use and impacts associated with hunting, fishing, and trapping on state trust land is terminated prior to the expiration date of the agreement, then [this act] is void upon termination. The department of natural resources and conservation shall notify the code commissioner of the termination.

(b) If the department of natural resources and conservation and the department of fish, wildlife, and parks do not enter into a renewal agreement prior to the expiration date of an agreement, then [this act] is void on the expiration date of the agreement. The department of natural resources and conservation shall notify the code commissioner of the expiration.

(3) If a court of competent jurisdiction determines that the agreement to compensate state trust land beneficiaries for the use and impacts associated with hunting, fishing, and trapping on state trust lands is invalid, then [this act] is void on the date the court's judgment is final. The department of natural resources and conservation shall notify the code commissioner of the entry of the judgment.

(4) If the department of natural resources and conservation and the department of fish, wildlife, and parks receive written notice from the regional director of the United States fish and wildlife service that [this act] will result in a loss of federal fish and wildlife funds, then [this act] is void. The department of natural resources and conservation shall notify the code commissioner that the department has received a notice and the date upon which the notice was received."

Cross-References

Peace officer defined, 1-1-207, 46-1-202.

77-1-802. *(Temporary)* **Recreational use — fee.** (1) The fee for general recreational use on state trust land must attain full market value whether the license is sold pursuant to 77-1-801 or under an agreement with the department of fish, wildlife, and parks as provided in 77-1-815.

(2) Money received by the department for general recreational use of state lands must be credited as follows:

(a) Except as provided in subsection (2)(b), fees must be apportioned on a pro rata basis to the land trusts, in proportion to the respective trust's percentage of acreage in the total acreage of all state land trusts.

(b) Revenue from recreational use license fees, less 50 cents from the fee for each license that must be returned to the license dealer as a commission, is distributable revenue and must be deposited pursuant to 77-1-109 and used to pay for administrative costs as provided in 77-1-108.

(3) The department may contract with the department of fish, wildlife, and parks for the distribution and sale of recreational use licenses through the license agents appointed by and the administrative offices of the department of fish, wildlife, and parks and in accordance with the provisions of Title 87, chapter 2, part 9. *(Void on occurrence of contingency—sec. 8, Ch. 596, L. 2003.)*

77-1-802. *(Effective on occurrence of contingency)* **Recreational use license — fee.** (1) The fee for a recreational use license must attain full market value.

(2) Money received by the department for general recreational use of state lands must be credited as follows:

(a) Except as provided in subsection (2)(b), fees must be apportioned on a pro rata basis to the land trusts, in proportion to the respective trust's percentage contribution to the total acreage of all state land trusts.

(b) Revenue from recreational use license fees, less 50 cents from the fee for each license that must be returned to the license dealer as a commission, is distributable revenue and must be deposited pursuant to 77-1-109 and used to pay for administrative costs as provided in 77-1-108.

(3) The department may contract with the department of fish, wildlife, and parks for the distribution and sale of recreational use licenses through the license agents appointed by and the administrative offices of the department of fish, wildlife, and parks and in accordance with the provisions of Title 87, chapter 2, part 9.

History: En. Sec. 12, Ch. 609, L. 1991; amd. Sec. 2, Ch. 586, L. 1993; amd. Sec. 5, Ch. 596, L. 2003; amd. Sec. 13, Ch. 465, L. 2009; amd. Sec. 6, Ch. 507, L. 2023.

Compiler's Comments

Contingent Voidness: Section 8, Ch. 596, L. 2003, provided: "(1) If the department of natural resources and conservation and the department of fish, wildlife, and parks do not sign an agreement to compensate state trust land beneficiaries for the use and impacts associated with hunting, fishing, and trapping on state trust land by [the effective date of this act] [effective March 1, 2004], then [this act] is void. The department of natural resources and conservation shall notify the code commissioner of the failure to reach an agreement. [An agreement was entered into effective December 8, 2003.]

(2) (a) If an agreement between the department of natural resources and conservation and the department of fish, wildlife, and parks to compensate state trust land beneficiaries for the use and impacts associated with hunting, fishing, and trapping on state trust land is terminated prior to the expiration date of the agreement, then [this act] is void upon termination. The department of natural resources and conservation shall notify the code commissioner of the termination.

(b) If the department of natural resources and conservation and the department of fish, wildlife, and parks do not enter into a renewal agreement prior to the expiration date of an agreement, then [this act] is void on the expiration date of the agreement. The department of natural resources and conservation shall notify the code commissioner of the expiration.

(3) If a court of competent jurisdiction determines that the agreement to compensate state trust land beneficiaries for the use and impacts associated with hunting, fishing, and trapping on state trust lands is invalid, then [this act] is void on the date the court's judgment is final. The department of natural resources and conservation shall notify the code commissioner of the entry of the judgment.

(4) If the department of natural resources and conservation and the department of fish, wildlife, and parks receive written notice from the regional director of the United States fish and wildlife service that [this act] will result in a loss of federal fish and wildlife funds, then [this act] is void. The department of natural resources and conservation shall notify the code commissioner that the department has received a notice and the date upon which the notice was received."

77-1-803 reserved.

77-1-804. Rules for recreational use of state lands — penalty. (1) The board shall adopt rules authorizing and governing the recreational use of state lands allowed under 77-1-203. The board shall use local offices of the department to administer this program whenever practical.

(2) Rules adopted under this section must address the circumstances under which the board may close legally accessible state lands to recreational use. Action by the board may be taken upon its own initiative or upon petition by an individual, organization, corporation, or governmental agency. Closures may be of an emergency, seasonal, temporary, or permanent nature. State lands may be closed by the board only after public notice and opportunity for public hearing in the area of the proposed closure, except when the department is acting under rules adopted by the board for an emergency closure. Closed lands must be posted by the lessee or by the department at the request of the lessee at customary access points, with signs provided or authorized by the department.

(3) Closure rules adopted pursuant to subsection (2) may categorically close state lands whose use or status is incompatible with recreational use. Categorical or blanket closures may be imposed on state lands due to:

(a) cabin site and home site leases and licenses;

(b) the seasonal presence of growing crops; and

(c) active military, commercial, or mineral leases.

(4) The board shall adopt rules that provide an opportunity for any individual, organization, or governmental agency to petition the board for purposes of excluding a specified portion of state land from a categorical closure that has been imposed under subsection (3).

(5) Under rules adopted by the board, state lands may be closed on a case-by-case basis for certain reasons, including but not limited to:

(a) damage attributable to recreational use that diminishes the income-generating potential of the state lands;

(b) damage to surface improvements of the lessee;

(c) the presence of threatened, endangered, or sensitive species or plant communities;

(d) the presence of unique or special natural or cultural features;

(e) wildlife protection;

(f) noxious weed control; or

(g) the presence of buildings, structures, and facilities.

(6) (a) Rules adopted under this section may impose restrictions on general recreational activities, including the discharge of weapons, camping, open fires, vehicle use, and any use that will interfere with the presence of livestock.

(b) The board may also by rule restrict access on state lands in accordance with a block management program administered by the department of fish, wildlife, and parks.

(c) Motorized vehicle use by recreationists on state lands is restricted to federal, state, and dedicated county roads, trails developed by the department for motorized use, and roads designated by the department to be open to motorized vehicle use.

(d) Recreational overnight use of state lands in a 30-day period is limited to 16 days:

(i) in a designated campground; and

(ii) on unleased, unlicensed lands outside a campground unless otherwise allowed by the department.

(e) Pets on state lands must be on a leash or otherwise controlled to prevent harassment of livestock or wildlife.

(f) Horses may be kept overnight on state lands if:

(i) the horses do not remain in a stream riparian zone for more than 1 hour; and

(ii) only feed certified as noxious weed seed free is present on state lands.

(g) A horse kept overnight on state lands where there is a lease or license must be kept in compliance with the provisions of subsection (6)(f) and must be restrained.

(h) Restrictions on general recreational activities must comply with the following:

(i) at least 30 days prior to a restriction, except in the case of emergency, the lessee or the department if requested by the lessee shall:

(A) post notice of the proposed restriction at frequent access points to the land where the restriction is proposed; and

(B) issue a press release or a public service announcement detailing the proposed restriction;

(ii) except for seasonal restrictions and unless required for public safety, a restriction in an area may not exceed 1 year; and

(iii) if a misuse of the land, including littering, may lead to a restriction, common access points must be posted with notice of the possible restriction for 30 days with information detailing the misuse of land and stating the penalties for the violation. If the misuse persists at the end of 30 days, a proposed restriction notice may be posted in accordance with subsection (6)(h)(i).

(7) The board shall adopt rules providing for the issuance of a recreational special use license. Commercial or concentrated recreational use, as defined in 77-1-101, is prohibited on state lands unless it occurs under the provisions of a recreational special use license. The board may also adopt rules requiring a recreational special use license for recreational use that is not commercial, concentrated, or within the definition of general recreational use.

(8) (a) For a violation of rules adopted by the board pursuant to this section, the department may assess a civil penalty of up to $1,000 for each day of violation. The board shall adopt rules providing for notice and opportunity for hearing in accordance with Title 2, chapter 4, part 6.

(b) If the department and the department of fish, wildlife, and parks consent to and sign an agreement for general recreational use as provided in 77-1-815, a person who violates a department rule that governs general recreational use is guilty of a misdemeanor and shall be fined not less than $50 or more than $500. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(c) Penalties collected under this subsection (8) must be deposited as provided in 87-1-601(8).

(9) Unauthorized dumping of refuse on state lands and destruction of property, which includes land and improvements, are misdemeanor crimes punishable by a fine of not more than $1,500.

History: En. Sec. 13, Ch. 609, L. 1991; amd. Sec. 284, Ch. 42, L. 1997; amd. Sec. 2, Ch. 62, L. 2011; amd. Sec. 1, Ch. 394, L. 2015; amd. Sec. 7, Ch. 507, L. 2023.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

77-1-805. Liability of state and lessee. (1) The provisions of 70-16-302 that limit the liability of a landowner or the landowner's tenant for the recreational use of property apply to the state and any lessee of state lands used for general recreational purposes.

(2) The lessee is not responsible for the suppression of or for damages resulting from a fire on the leased land caused by a general recreational user, except that a lessee who observes a fire caused by a general recreational user shall make reasonable efforts to suppress the fire or report it to the proper firefighting authority.

History: En. Sec. 14, Ch. 609, L. 1991; amd. Sec. 2543, Ch. 56, L. 2009.

77-1-806. Prior notification to lessee of recreational use — trespass — penalty. (1) If a lessee of state lands under this part desires to be notified prior to anyone entering upon the leasehold, the lessee shall post, at customary access points, signs provided or authorized by the department. The signs must set forth the lessee's or the lessee's agent's name, address, telephone number, and method of notification. The lessee or the lessee's agent must be available to receive notice from recreational users or provide an alternative means for notice as prescribed by rule. When state land is posted, recreational users shall contact and identify themselves to the lessee or the lessee's agent for the purposes of minimizing impact upon the leasehold interest and learning the specific boundaries of adjacent unfenced private property.

(2) Each recreational user of state lands shall obtain permission of the lessee or the lessee's agent before entering the adjacent private property owned by the lessee. Entry to private property from adjacent state lands without permission of the landowner or the landowner's agent is an absolute liability offense. A violator of this subsection is guilty of a misdemeanor and shall be fined not less than $50 or more than $500 or imprisoned in the county jail for not more than 6 months, or both.

(3) A person may be found guilty of the offense described in subsection (2) regardless of the absence of fencing or failure to post a notice in accordance with 45-6-201.

(4) The use of a ford or crossing on a navigable river or stream by the adjacent landowner may not be considered a trespass for the purposes of this section.

History: En. Sec. 15, Ch. 609, L. 1991; amd. Sec. 2544, Ch. 56, L. 2009; amd. Sec. 9, Ch. 472, L. 2009.

77-1-807 reserved.

77-1-808. *(Temporary)* **State lands recreational use.** Money appropriated for the purpose of managing recreational use of state lands must be used by the department for the following purposes:

(1) compensation pursuant to 77-1-809 for damage to the improvements of leases that has been proved to be caused by recreational users;

(2) assistance in weed control management necessary as a result of recreational use of state lands;

(3) protection of the resource value of the trust assets;

(4) administration and management for the implementation of recreational use of state lands; and

(5) maintenance of roads necessary for public recreational use of state trust land. *(Void on occurrence of contingency—sec. 8, Ch. 596, L. 2003.)*

77-1-808. *(Effective on occurrence of contingency)* **State lands recreational use.** Money appropriated for the purpose of managing recreational use of state lands must be used by the department for the following purposes:

(1) compensation pursuant to 77-1-809 for damage to the improvements of leases that has been proved to be caused by recreational users;

(2) assistance in weed control management necessary as a result of recreational use of state lands;

(3) protection of the resource value of the trust assets; and

(4) administration and management for the implementation of recreational use of state lands.

History: En. Sec. 16, Ch. 609, L. 1991; amd. Sec. 68, Ch. 509, L. 1995; amd. Sec. 1, Ch. 117, L. 2001; amd. Sec. 6, Ch. 596, L. 2003; amd. Sec. 14, Ch. 465, L. 2009.

Compiler's Comments

Contingent Voidness: Section 8, Ch. 596, L. 2003, provided: "(1) If the department of natural resources and conservation and the department of fish, wildlife, and parks do not sign an agreement to compensate state trust

land beneficiaries for the use and impacts associated with hunting, fishing, and trapping on state trust land by [the effective date of this act] [effective March 1, 2004], then [this act] is void. The department of natural resources and conservation shall notify the code commissioner of the failure to reach an agreement. [An agreement was entered into effective December 8, 2003.]

(2) (a) If an agreement between the department of natural resources and conservation and the department of fish, wildlife, and parks to compensate state trust land beneficiaries for the use and impacts associated with hunting, fishing, and trapping on state trust land is terminated prior to the expiration date of the agreement, then [this act] is void upon termination. The department of natural resources and conservation shall notify the code commissioner of the termination.

(b) If the department of natural resources and conservation and the department of fish, wildlife, and parks do not enter into a renewal agreement prior to the expiration date of an agreement, then [this act] is void on the expiration date of the agreement. The department of natural resources and conservation shall notify the code commissioner of the expiration.

(3) If a court of competent jurisdiction determines that the agreement to compensate state trust land beneficiaries for the use and impacts associated with hunting, fishing, and trapping on state trust lands is invalid, then [this act] is void on the date the court's judgment is final. The department of natural resources and conservation shall notify the code commissioner of the entry of the judgment.

(4) If the department of natural resources and conservation and the department of fish, wildlife, and parks receive written notice from the regional director of the United States fish and wildlife service that [this act] will result in a loss of federal fish and wildlife funds, then [this act] is void. The department of natural resources and conservation shall notify the code commissioner that the department has received a notice and the date upon which the notice was received."

77-1-809. Compensation for damage to improvements, growing crops, or livestock. A lessee may apply to the department for reimbursement of documented costs of repair to or replacement of improvements, growing crops, or livestock damaged by recreational users of state lands. For the purpose of this section, improvements include the structures described in 77-1-134. The application must include an affidavit by the applicant setting forth the nature of the loss, allegations and reasonable proof supporting the involvement of recreational users, and documentation of repair or replacement costs. Upon review of the application and supporting proof and upon additional investigation as required, the department shall grant, modify, or deny the claim. The department, by reason of payment to the lessee for damage to improvements, is entitled to be subrogated to the rights of the lessee to recover the amount paid from the party causing the damage. Payments under this section must be made from appropriations from the trust land administration account established by 77-1-108, and the liability of the department for damage payments is limited to 10% of revenue received from the recreational use fee and deposited in the account. Claim applications are to be considered in the order they are received.

History: En. Sec. 17, Ch. 609, L. 1991; amd. Sec. 69, Ch. 509, L. 1995; amd. Sec. 15, Ch. 465, L. 2009; amd. Sec. 10, Ch. 472, L. 2009.

77-1-810. Weed control management. (1) The department shall establish a weed control management program for the control of noxious weeds reasonably proved to be caused by the recreational use of state lands. The department may by rule establish a noxious weed management program that may include direct compensation for noxious weed control activities or participation in district and county weed control projects or department-initiated weed control activities.

(2) Funding for this program must come from appropriations from the trust land administration account provided for in 77-1-108.

History: En. Sec. 18, Ch. 609, L. 1991; amd. Sec. 70, Ch. 509, L. 1995; amd. Sec. 16, Ch. 465, L. 2009.

77-1-811 through 77-1-814 reserved.

77-1-815. *(Temporary)* **Agreement for general recreational use on legally accessible state trust land.** (1) The board is authorized to enter into an agreement with the department of fish, wildlife, and parks to compensate state trust land beneficiaries for the use and impacts associated with general recreational uses as defined in 77-1-101 on legally accessible state trust land as defined in 77-1-101. The department may impose restrictions it considers necessary to coordinate the uses of state trust land or to preserve the purposes of the various trust lands. General recreational uses as defined in 77-1-101 on state trust land must be conducted in accordance with rules and provisions provided in this part.

(2) An agreement may be entered into with the department of fish, wildlife, and parks for a term of up to 10 years. Through this agreement, the board shall recover for the beneficiaries of the trust the full market value for the use and impacts associated with general recreational use on trust land, as defined in 77-1-101 The department may use funds appropriated from the trust land administration account provided for in 77-1-108 to implement and manage the

agreement. Except as provided for in 17-7-304, any unexpended amount in the account that resulted from recreational use fees must be apportioned on a pro rata basis to the land trusts, in proportion to the respective trust's percentage of acreage in the total acreage of all state land trusts.

(3) Any agreement entered into is subject to the following conditions:

(a) The department maintains sole discretion, throughout the term of the agreement, with regard to identifying legally accessible parcels, coordinating uses on state trust land, and making any other necessary state trust land management decisions.

(b) An agreement between the department and the department of fish, wildlife, and parks may not convey any additional authority to the department of fish, wildlife, and parks. *(Void on occurrence of contingency—sec. 8, Ch. 596, L. 2003.)*

History: En. Sec. 1, Ch. 596, L. 2003; amd. Sec. 17, Ch. 465, L. 2009; amd. Sec. 8, Ch. 507, L. 2023.

Compiler's Comments

Contingent Voidness: Section 8, Ch. 596, L. 2003, provided: "(1) If the department of natural resources and conservation and the department of fish, wildlife, and parks do not sign an agreement to compensate state trust land beneficiaries for the use and impacts associated with hunting, fishing, and trapping on state trust land by [the effective date of this act] [effective March 1, 2004], then [this act] is void. The department of natural resources and conservation shall notify the code commissioner of the failure to reach an agreement. [An agreement was entered into effective December 8, 2003.]

(2) (a) If an agreement between the department of natural resources and conservation and the department of fish, wildlife, and parks to compensate state trust land beneficiaries for the use and impacts associated with hunting, fishing, and trapping on state trust land is terminated prior to the expiration date of the agreement, then [this act] is void upon termination. The department of natural resources and conservation shall notify the code commissioner of the termination.

(b) If the department of natural resources and conservation and the department of fish, wildlife, and parks do not enter into a renewal agreement prior to the expiration date of an agreement, then [this act] is void on the expiration date of the agreement. The department of natural resources and conservation shall notify the code commissioner of the expiration.

(3) If a court of competent jurisdiction determines that the agreement to compensate state trust land beneficiaries for the use and impacts associated with hunting, fishing, and trapping on state trust lands is invalid, then [this act] is void on the date the court's judgment is final. The department of natural resources and conservation shall notify the code commissioner of the entry of the judgment.

(4) If the department of natural resources and conservation and the department of fish, wildlife, and parks receive written notice from the regional director of the United States fish and wildlife service that [this act] will result in a loss of federal fish and wildlife funds, then [this act] is void. The department of natural resources and conservation shall notify the code commissioner that the department has received a notice and the date upon which the notice was received."

77-1-816 through 77-1-819 reserved.

77-1-820. Repealed. Sec. 14, Ch. 460, L. 2025.

History: En. Sec. 2, Ch. 394, L. 2015.

Part 9
Commercial Leasing of State Trust Land

77-1-901. Declaration of policy and purpose. (1) Pursuant to Article X of the Montana constitution, the legislature declares that it is the policy of the state that state trust land is to be treated as a sacred trust and is subject to fiduciary principles in its management. It is the intent of the legislature that state trust land be managed in the best financial interest of current and future individual beneficiaries for whom this land is managed and held.

(2) A purpose of this chapter is to implement Article X of the Montana constitution. To fulfill its commitment to the management of state trust land in the best long-term financial interests of the beneficiaries, the Montana legislature finds that the state can prudently maximize the long-term revenue accruing to the beneficiaries by issuing commercial leases on land where the chief value exists in its use for commercial purposes.

History: En. Sec. 1, Ch. 404, L. 2003.

77-1-902. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Attainable workforce housing" has the same meaning as provided in 90-6-143.

(2) "Cancellation" means the cessation of a lessee's possessory rights and privileges under a lease due to the lessee's breach of some term of the lease, applicable statutes, or applicable administrative rules.

(3) "Commercial lease" means a contract to use state trust land for a commercial purpose.

(4) (a) "Commercial purpose" means an industrial enterprise, retail sales outlet, business and professional office building, warehouse, motel, hotel, hospitality enterprise, commercial or concentrated recreational use, single-family or multifamily residential development authorized under a lease with a master lessee, including a lease executed with a nonprofit corporation for the purposes of developing attainable workforce housing, the development of mobile home parks or multiple manufactured housing units for lease or rent, and other similar business.

(b) The term does not include the following uses:

(i) agriculture;

(ii) grazing;

(iii) exploration or development of oil and gas, minerals, and resources from geothermal, wind, or solar;

(iv) single-family residences, home sites, and cabin sites licensed or leased pursuant to 77-1-208; and

(v) utility rights-of-way.

(5) "Land value" is the monetary value of the land determined by an appraisal by a certified general appraiser or a department staff appraiser or by a limited valuation.

(6) "Limited valuation" means estimating the land value of commercial lease land by analyzing comparable land valuations conducted within 2 years of the lease commencement date as provided by real estate appraisers, local tax assessors, local realtors, an evaluation of local market rents, or a combination of those methods.

(7) "Termination" means the automatic completion or ending of the term of a contract according to its provisions. Upon termination, the lessee ceases to have any possessory rights or privileges under a lease.

History: En. Sec. 2, Ch. 404, L. 2003; amd. Sec. 1, Ch. 412, L. 2017; amd. Sec. 1, Ch. 313, L. 2021; amd. Sec. 6, Ch. 376, L. 2025; amd. Sec. 1, Ch. 757, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 6, Ch. 376, L. 2025. Amendment effective October 1, 2025.

See 2025 Session Law for amendment made by sec. 1, Ch. 757, L. 2025. Amendment effective October 1, 2025.

77-1-903. Authority of board to determine development. The board shall determine how the development of state trust land for commercial purposes is to proceed before any state trust land is offered for lease. In making this determination, the board may consider the following factors:

(1) the purpose of any development or development plan;

(2) the allocation and location of specific uses of the land, including residential, commercial, industrial, recreational, or other appropriate uses;

(3) the densities and intensities of designated land uses;

(4) the timing and rate of development; and

(5) the timely delivery of adequate facilities and services, including water, wastewater collection and treatment systems, parks and public recreational facilities, drainage facilities, school sites, roads, and transportation facilities.

History: En. Sec. 3, Ch. 404, L. 2003.

77-1-904. Commercial leasing authorized. (1) State trust land may be leased for a term not to exceed 99 years for commercial purposes to the highest and best bidder responding to a department request for proposals for commercial uses of a specified tract.

(2) The board may enter into contracts with lessees of state trust land for commercial purposes upon terms and conditions that the board may reasonably determine to be in the best interests of the beneficiary.

(3) A request for proposals for the commercial leasing of state trust land must reserve the board's right to reject any and all bids and the right to reoffer the tract for lease if the bids received are not acceptable to the board.

(4) The board and the department, when preparing plans or proposals under this part, shall implement review criteria in consideration of the following local government provisions except to the extent that the provisions violate Article X, section 4 or 11, of the Montana constitution:

(a) a growth policy or a neighborhood plan adopted pursuant to Title 76, chapter 1;

(b) zoning regulations;
(c) subdivision review as provided in Title 76, chapter 3;
(d) annexation;
(e) plans for the extension of services; and
(f) other actions related to local planning.

History: En. Sec. 4, Ch. 404, L. 2003; amd. Sec. 2, Ch. 335, L. 2005.

77-1-905. Rental provisions for commercial leasing — payments and credits — administration — lease options. (1) The first year's annual rental payment for state trust land leased for commercial purposes must be paid by cashier's check or electronic funds transfer, as defined in 32-6-103, and payment is due upon execution of the lease. The department may require the lessee of state trust land for commercial purposes to pay the department's cost of the request for proposals process, including publication and other reasonable expenses. Failure to make the first year's rental payment at the time of lease execution must result in the cancellation of the lease and forfeiture of all money paid. In the event of cancellation or in the event that the successful proposer is offered and does not accept the lease, the board may enter into negotiations with other persons who submitted a proposal for commercial purposes in response to the department request for proposals on that tract.

(2) The annual rental payment is full market value and may not be less than the product of the land value multiplied by a rate that is 2 percentage points a year less than the rate of return of the unified investment program administered by the board of investments pursuant to 17-6-201. The rate of return from the unified investment program used in this subsection must be determined no less than 30 days prior to the execution of the competitive bid. A commercial lease may include a rental adjustment formula established by the board that periodically adjusts the annual rental payment provided for in the lease at frequencies specified in the lease. The board may allow a credit against the annual rental payment for payments made by the lessee on behalf of the state of Montana for construction of structures and improvements, special improvement district assessments, annexation fees, or other city or county fees attributable to the state's property interest in land leased for commercial purposes. The board may accept as lawful consideration in-kind payments of services or materials equal to the full market rental value calculated for any commercial lease. A lease issued under this part may include an amortization schedule to be used to determine the value to the lessee of improvements when the lease is terminated.

(3) The department may use funds appropriated from the trust land administration account provided for in 77-1-108 to contract with realtors, property managers, surveyors, legal counsel, or lease administrators to administer the commercial lease, either singly or in common with other leases, or to provide assistance to the department in the administration of commercial leases.

(4) In anticipation of entering into a commercial lease, the board may issue an option to lease at a rental rate that the board determines to be appropriate. An option to lease may not be construed to grant a right of immediate possession or control over the land but may only preserve the optionholder's exclusive right to obtain a commercial lease on the land in the future.

History: En. Sec. 5, Ch. 404, L. 2003; amd. Sec. 9, Ch. 247, L. 2007; amd. Sec. 18, Ch. 465, L. 2009; amd. Sec. 1, Ch. 193, L. 2015; amd. Sec. 2, Ch. 412, L. 2017.

77-1-906. Requirements for commercial lease — improvements. (1) The board shall require, subject to the board's supervision and jurisdiction, that the lessee be solely responsible for the expense of maintenance and operation of the enterprise, business, or venture and all improvements made and constructed in support of any commercial purpose during the term of the lease. This requirement does not apply to the installation and construction by the lessee of infrastructure and improvements, such as public roads, parks, sewers, or utilities, if they were required by a local government as a condition of development.

(2) Upon expiration of the lease, the title to all permanent improvements and fixtures located on the leased property and used in the operation and maintenance of the enterprise vests in the state. The lease must describe in detail the manner and subject matter of the transfer to the state.

History: En. Sec. 6, Ch. 404, L. 2003.

77-1-907. Qualifications for commercial lessees — bonds. (1) Before accepting any offer for a commercial lease, the board shall establish, to its satisfaction, the financial capability of the person seeking the commercial lease and the legal authority of the person to conduct business in the state. Prior to executing a commercial lease, the board may require the posting of bonds, sureties, guarantees, or a letter of credit sufficient to ensure that the commercial purposes will be conducted as proposed with no harm to the financial interests of the beneficiaries.

(2) All commercial leases of which the commercial purpose includes the use of a hazardous substance as defined in 75-10-602 must be bonded to ensure a degree of cleanup of the hazardous substance that ensures protection of public health, safety, and welfare and of the environment in a manner that protects the long-term financial interest of the beneficiaries.

History: En. Sec. 7, Ch. 404, L. 2003.

77-1-908. Land use license issuance following reclassification. Following cancellation of a preexisting lease due to a reclassification pursuant to 77-1-401 through 77-1-403, the department may issue a land use license for the commercial lands reclassified for a term the department considers necessary to protect the income to the trust and to protect the state.

History: En. Sec. 8, Ch. 404, L. 2003.

77-1-909. Cancellation or termination of commercial lease. A commercial lease may be canceled at the option of the board or its designated representative for any violation of a lease provision. Upon cancellation or termination of a lease, the department may seek a new lessee in accordance with this part. If the costs of the commercial development have not been recovered by the state at the time of cancellation or termination, a subsequent lessee under this section shall reimburse the state for development costs, assessments, or fees only to the extent that the proportionate part of the costs, assessments, and fees to the state for obtaining the development have not been recovered.

History: En. Sec. 9, Ch. 404, L. 2003.

77-1-910. Encumbrance on leased land. (1) An encumbrance may not be placed upon the state's interest in land leased for commercial purposes.

(2) A commercial lease of state trust land may contain provisions that will permit the encumbering of the lessee's interest in the lease by mortgage or deed of trust.

History: En. Sec. 10, Ch. 404, L. 2003.

77-1-911. Notice and payment of assessments. (1) The lessee of a commercial lease on state trust land shall furnish to the department:

(a) officially certified descriptions of all state trust land included within the boundaries of a city or county improvement district that is the subject of the commercial lease; and

(b) a description and listing of the amount of assessments and charges of every character made against the leasehold interest of the lessee and the leasehold interest of the state, as soon as the assessments or charges are levied.

(2) A promise by the lessee to make timely payment of all assessment charges and an acknowledgment of the assessment must be inserted in any lease for state trust land.

(3) If assessments have been levied against any state trust land prior to commercial lease, the board shall require that all unpaid installments on assessments be paid to the improvement district before executing a lease.

(4) If an installment on an assessment or charge against the leasehold interest of the lessee of land subject to a commercial lease is not paid when due, the nonpayment constitutes a breach of the lease.

History: En. Sec. 11, Ch. 404, L. 2003.

77-1-912. Rulemaking. The board may adopt rules to:

(1) establish procedures for the issuance of requests for proposals for commercial purposes and the commercial leasing of state trust land;

(2) prescribe the form and content of commercial leases; and

(3) develop any other procedures necessary to fulfill the purposes of this part or to implement the commercial leasing of state trust land.

History: En. Sec. 12, Ch. 404, L. 2003.

Part 10
Management of Crown Butte Land Exchange Property Interests

77-1-1001. Inventories and assessments. (1) The department may, in consultation with appropriate state agencies and the Northern Cheyenne tribe, conduct resource inventories and assessments of all or parts of the property interests acquired from the federal government in the Crown Butte land exchange to assist in the leasing, promotion, and development of those property interests. Those inventories and assessments include but are not limited to:

(a) cultural resource inventories and assessments;

(b) coal resource inventories and assessments;

(c) market analysis of the mineral resources; or

(d) any other inventories and assessments required by law or that the department determines are necessary.

(2) The department may place all or parts of the property interests acquired from the federal government in the Crown Butte land exchange up for lease in accordance with the procedures provided for in Title 77.

(3) Nothing in this section prevents the department from receiving applications to place the tracts for lease prior to the completion of inventories and assessments, and the department may lease the property interests acquired from the federal government in the Crown Butte land exchange in accordance with the applicable provisions of Title 77.

(4) Nothing in this section is intended to alter, diminish, or impair the Otter Creek settlement agreement between the state of Montana and the Northern Cheyenne tribe, and nothing in this section prevents the state from cooperating with the Northern Cheyenne tribe to enforce air and water quality standards through government-to-government reciprocity agreements.

History: En. Sec. 1, Ch. 318, L. 2003.

77-1-1002. Planning of lease actions. (1) The department shall manage the property interests acquired from the federal government in the Crown Butte land exchange consistent with 77-3-102 and consult with the private surface owners and the private mineral owners that control the coal property interests that are located in a checkerboard arrangement with the mineral interests acquired from the federal government in the Crown Butte land exchange in the planning of leasing actions.

(2) Consistent with Title 77, the department's leasing actions must:

(a) attain the fair market value and optimize the monetary return to the public school fund; and

(b) facilitate and encourage timely development of the property interests acquired from the federal government in the Crown Butte land exchange.

History: En. Sec. 2, Ch. 318, L. 2003.

Part 11
Use of Beds of Navigable Rivers

77-1-1101. Void. Sec. 12, Ch. 475, L. 2009.
History: En. Sec. 1, Ch. 475, L. 2009.

77-1-1102. Void. Sec. 12, Ch. 475, L. 2009.
History: En. Sec. 2, Ch. 475, L. 2009.

77-1-1103. Void. Sec. 12, Ch. 475, L. 2009.
History: En. Sec. 3, Ch. 475, L. 2009.

77-1-1104. Void. Sec. 12, Ch. 475, L. 2009.
History: En. Sec. 4, Ch. 475, L. 2009.

77-1-1105. Void. Sec. 12, Ch. 475, L. 2009.
History: En. Sec. 5, Ch. 475, L. 2009.

77-1-1106. Void. Sec. 12, Ch. 475, L. 2009.
History: En. Sec. 6, Ch. 475, L. 2009.

77-1-1107. Void. Sec. 12, Ch. 475, L. 2009.
History: En. Sec. 7, Ch. 475, L. 2009.

77-1-1108. Void. Sec. 12, Ch. 475, L. 2009.
History: En. Sec. 8, Ch. 475, L. 2009.

77-1-1109. Legislative findings — purpose. (1) The legislature finds that:

(a) Article IX, section 3, of the Montana constitution provides that the use of all water that is or may be appropriated for sale, rent, distribution, or other beneficial use, the right-of-way over the lands of others for all ditches, drains, flumes, canals, and aqueducts necessarily used in connection with the beneficial use, and the sites for reservoirs necessary for collecting and storing water are a public use;

(b) a person who has historically used the bed of a navigable river in conjunction with a legal use of water or for other uses or a person who desires to use the bed of a navigable river in conjunction with a legal use of water or for other uses must be able to do so provided that statutory provisions are met; and

(c) any person who uses the bed of a navigable river after October 1, 2011, shall apply to the state for a lease, license, or easement and pay full market value for the use of the riverbed.

(2) The purpose of this part is to clarify the process for the use of the beds of navigable rivers and how the state should be compensated for that use.

(3) Nothing in this part diminishes the state's ownership of the beds of navigable rivers, streams, or lakes under any other law.
History: En. Sec. 1, Ch. 359, L. 2011.

77-1-1110. Definitions. Solely for the purposes of this part, the following definitions apply:

(1) "Footprint" means a structure or other constructed interruption or modification to the bed of a navigable river below the low-water mark as provided in 70-16-201.

(2) "Full market value" means an amount calculated based upon the area of a footprint and the fair market value as determined by rule or statute. The annual payment for a license issued under this part is $150.

(3) "Navigable river" means a river adjudicated as navigable for title purposes by a court of competent jurisdiction.
History: En. Sec. 2, Ch. 359, L. 2011.

77-1-1111. Use of beds of navigable rivers — authorization requirement restricted. The board or the department may require a lease, license, or easement under this part only for a footprint on the bed of a navigable river.
History: En. Sec. 3, Ch. 359, L. 2011.

77-1-1112. Historic use of navigable riverbeds — authorization required — exemptions. (1) A person using the bed of a navigable river below the low-water mark without written authorization from the department prior to October 1, 2011, who wants to continue use of the bed of a navigable river after October 1, 2011, shall file for authorization of the use on a form prescribed by the department for a lease, license, or easement by July 15, 2025.

(2) A person using the bed of a river below the low-water mark without written authorization from the department who wants to continue use of the bed after the date the river is determined to be a navigable river shall file for authorization of the use on a form prescribed by the department for a lease, license, or easement within 5 years after the date that notice is issued by the department as provided in 77-1-1114.

(3) The application must include:

(a) an application fee of $50;

(b) a notarized affidavit:

(i) demonstrating that the applicant or the applicant's predecessor in interest used the bed of a navigable river and that the use continues;

(ii) describing the acreage covered by the footprint prior to October 1, 2011, or, for applications under subsection (2), the acreage covered by the footprint prior to the date the river was determined to be navigable; and

(iii) demonstrating that the use applied for under this section is the use shown in the evidence provided in subsection (3)(c); and

(c) (i) aerial photographs demonstrating the use to which the application for authorization applies; or

(ii) other evidence of the use to which the application for authorization applies.

(4) The department shall issue the authorization for a lease, license, or easement if:

(a) the applicant provides evidence to satisfy the requirements of subsection (3);

(b) the applicant pays the application fee and the full market value of the footprint acreage;

(c) the department has, if necessary, made a site inspection of the use to which the application for authorization applies;

(d) the authorization is for only the acreage of the footprint historically used by the applicant or the applicant's predecessor in interest; and

(e) the authorization is approved by the board.

(5) Proceeds from the application fee must be deposited in the account in 77-1-1113 and must be used by the department to administer the provisions of this section.

(6) The full market value collected pursuant to subsection (4)(b) must be deposited in the appropriate trust fund established for receipt of income from the land over which an authorized use is granted.

(7) Issuance of an authorization pursuant to this section is exempt from the requirements of Title 22, chapter 3, part 4, and Title 75, chapter 1, parts 1 and 2.

(8) The department shall waive the survey requirements of 77-2-102 if the department determines that there is sufficient information available to define the boundaries of the proposed use for the purposes of recording the easement or issuing a license or lease.

(9) The requirements of this section do not apply to footprints:

(a) related to hunting, fishing, or trapping;

(b) that existed prior to November 8, 1889;

(c) for which the applicant can show an easement obtained from a state agency prior to October 1, 2011, or prior to the date the river was determined to be a navigable river; or

(d) associated with a power site regulated pursuant to Title 77, chapter 4, part 2.

(10) A person using the bed of a navigable river who is subject to this section may continue to use the bed of the navigable river for that purpose while applying for a lease, license, or easement or until the applicable timeframe for obtaining a lease, license, or easement expires. The state may not impede access to a footprint or use of a footprint during the applicable timeframe or after a lease, license, or easement is obtained.

(11) The provisions of this section do not restrict the power of the board to seek adjudication of title pursuant to 77-1-105.

History: En. Sec. 4, Ch. 359, L. 2011; amd. Sec. 1, Ch. 108, L. 2015; amd. Sec. 1, Ch. 334, L. 2021.

77-1-1113. Historic riverbed use account. (1) There is an account in the state special revenue fund into which the application fees collected pursuant to 77-1-1112 must be deposited.

(2) The funds in the account may be used only for administering the provisions of 77-1-1112.

History: En. Sec. 5, Ch. 359, L. 2011.

77-1-1114. Notice required. (1) Before July 1, 2016, the department shall provide notice of the requirements of this part to owners of property adjacent to rivers that were navigable rivers on October 1, 2011, and provide notice pursuant to subsection (3).

(2) For a river determined to be a navigable river after October 1, 2011, the department shall provide notice of the requirements of this part to owners of property adjacent to the navigable river within 6 months of the determination that the river is navigable. The 5-year period pursuant to 77-1-1112 begins when the department issues this notice and publishes the notice required in subsection (3) of this section.

(3) The department shall publish notice of navigable rivers and the requirements of this part twice in a newspaper of general circulation in the area of the navigable river.

History: En. Sec. 6, Ch. 359, L. 2011; amd. Sec. 2, Ch. 108, L. 2015.

77-1-1115. Navigable riverbed uses — lease, license, or easement required — challenges. (1) (a) After October 1, 2011, the department shall require a person who proposes to use the bed of a navigable river up to the low-water mark to obtain a lease, license, or easement pursuant to the provisions of this title.

(b) The requirements of subsection (1)(a) do not apply to footprints related to hunting, fishing, or trapping.

(2) An applicant for authorization to use the bed of a navigable river pursuant to 77-1-1112 or for a lease, license, or easement under this section may challenge the requirement of the authorization based on the navigability of the river, the location of the footprint related to the low-water mark, or other factors. There is no presumption of navigability because an entity has applied for or received a lease, license, or easement.

History: En. Sec. 7, Ch. 359, L. 2011.

77-1-1116. Easement transferable — relocation of structure — increased footprint. (1) An easement granted pursuant to 77-1-1112 or 77-1-1115 runs with the benefited land and may be transferred or assigned.

(2) (a) Pursuant to rules adopted under 77-1-1117, the holder of a lease, license, or easement under 77-1-1112 or 77-1-1115 may relocate or increase the size of a footprint and associated facilities due to the natural relocation of a navigable river or other factors.

(b) (i) The holder of a lease, license, or easement shall provide written notice to the department when a footprint or associated facilities are proposed to be relocated or increased in size.

(ii) Without prior board approval, the holder of a lease, license, or easement for water diversion structures associated with a water right may relocate or increase the size of the footprint if the relocation or increase is necessary to accomplish the purpose for which the lease, license, or easement was granted. If the footprint is increased in size, the holder shall pay full market value for the portion of the footprint that is greater than the original footprint and shall obtain the appropriate state or federal permits.

(3) Section 77-1-805 applies to the use of navigable rivers for which leases, licenses, or easements for the use of the bed have been granted.

History: En. Sec. 8, Ch. 359, L. 2011.

77-1-1117. Board to adopt rules. To fulfill the requirement of this part, the board shall adopt rules to:

(1) determine the full market value for the use of the bed of a navigable river and establish a minimum payment for leases and easements;

(2) allow an applicant to choose to apply for a lease, license, or easement depending on the type of proposed use and the duration of the use; and

(3) allow the holder of a lease, license, or easement to relocate or increase the size of a footprint based on natural relocation of a navigable river or other factors.

History: En. Sec. 9, Ch. 359, L. 2011.

CHAPTER 2
TRANSFERS AND RESERVATIONS OF PROPERTY INTERESTS

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Part 1
Easements

Part Cross-References

Easements of state lands authorized, The Enabling Act, sec. 11 (see anno. vol. 1).
Servitudes — easements, Title 70, ch. 17.

77-2-101. Easements for specific uses. Upon proper application as provided in 77-2-102(1) through (5), the board may grant easements on state lands for the following purposes:

(1) public uses described in 70-30-102;

(2) schoolhouse sites and grounds;

(3) public parks;

(4) public trails;

(5) community buildings;

(6) cemeteries;

(7) conservation purposes:

(a) to the department of fish, wildlife, and parks for parcels that are surrounded by or adjacent to land owned by the department of fish, wildlife, and parks as of January 1, 2001; and

(b) to a nonprofit corporation for parcels that are surrounded by or adjacent to land owned by that same nonprofit corporation as of January 1, 2001;

(8) right-of-way across or on any portion of state lands for any public highway or street or for any canal, ditch, flume, aqueduct, pipe, reservoir, railroad, private road, telephone line, or water conveyance for irrigation purposes;

(9) any private building or private sewage system that encroaches on state lands;

(10) pursuant to 77-1-1112 or 77-1-1115, the use of the bed of a navigable river; or

(11) pursuant to 77-2-102(6), private access roads, county roads, and utility facilities constructed on state lands prior to October 1, 1997.

History: (1)En. Sec. 57, Ch. 60, L. 1927; re-en. Sec. 1805.57, R.C.M. 1935; amd. Sec. 6, Ch. 257, L. 1965; amd. Sec. 53, Ch. 428, L. 1973; Sec. 81-802, R.C.M. 1947; (2)En. Sec. 62, Ch. 60, L. 1927; re-en. Sec. 1805.62, R.C.M. 1935; amd. Sec. 2, Ch. 108, L. 1939; Sec. 81-804, R.C.M. 1947; R.C.M. 1947, 81-802, 81-804(part); amd. Sec. 1, Ch. 230, L. 2001; amd. Sec. 9, Ch. 475, L. 2009; amd. Sec. 12, Ch. 359, L. 2011; amd. Sec. 1, Ch. 309, L. 2023; amd. Sec. 1, Ch. 435, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 435, L. 2025. Amendment effective May 5, 2025.

Cross-References

State departments — maintenance of facilities throughout state, 2-15-112.
Approval of Department of Administration — acquisition of property in Helena area by state agencies, 2-17-101.
Department of Administration custodian of property in Capitol area, 2-17-811.
Authorization for County Commissioners to obtain property, 7-8-2201.
Authorization for city to erect buildings, 7-8-4101.
City authorized to establish trafficways and public grounds, 7-14-4101.
City authorized to establish parks, 7-16-4101.
Selection of school sites, 20-6-621.
Department of Transportation — acquisition of property, 60-4-102.
Easements allowed on riparian land, 77-2-303.

77-2-102. Application for easement — survey exemptions. (1) Application for an easement on state land must be made to the department. Except as provided in subsections (3) through (5), the application must describe the proposed right-of-way according to survey, show the necessity for the proposed highway or street or other easement, and give any additional information that the department requires.

(2) This application must be accompanied by two exact copies of the official plat of the proposed highway, street, or other easement, verified by the affidavit of the engineer or surveyor who prepared the application. These plats must show the quantity of land taken by the proposed highway or street or other easement for each 40-acre tract or government lot of state land over or through which it passes and also the amount of land remaining in each portion of that 40-acre tract or government lot. When considered necessary by the department, these plats must show all these facts for smaller subdivisions as the circumstances may render desirable for the state.

(3) The application must include the affidavit of a licensed engineer or professional surveyor stating that the methodology used is known to be accurate to within 5 meters. The

survey must be tied to an established section corner or 1/4 corner monument. The department may request greater accuracy if the department determines that the information is needed to adequately describe the easement.

(4) If the purpose of the right-of-way applied for is the transmission or distribution of electrical energy or the construction and operation of pipelines or telephone, telegraph, or radio systems, the plats and measurements need not be given. An exact geographical survey is not required, but the application must include the description of the location of the center line of the right-of-way that refers to an established monument within a filed corner recordation form, certificate of survey, or subdivision plat. The accuracy requirements of subsection (3) must be met. The entire right-of-way may be applied for in one application with only one plat of the entire right-of-way required. An archaeological survey is not required if, in the opinion of the department, heritage property would not be impacted.

(5) (a) If the purpose of the right-of-way applied for is a regional water authority provided for in Title 75, chapter 6, part 3, the plats and measurements need not be given. An exact geographical survey is not required, but the application must include the description of the location of the center line of the right-of-way.

(b) The application provided for in subsection (5)(a) must be accompanied by electronic global positioning system data in the Montana coordinate system, the easement location depicted on a topographical map to a scale of 1:24,000, easement coordinates, and the quantity of land taken in each quarter-quarter section.

(6) (a) The department may waive survey requirements for rights-of-way or easements provided for in 77-2-101(11) when there is sufficient information to define the boundaries of the right-of-way or easement to record the right-of-way or easement.

(b) An application for a private access road to private property must include:

(i) a description of appurtenant private lands historically accessed by the access road;

(ii) aerial photographs or images by an agency of the United States government dated prior to October 1, 1997, that depict the access road; and

(iii) easement location depicted on a topographical map to a scale of 1:24,000.

(c) An application for an existing county road must include:

(i) documentation establishing the road pursuant to Title 7, chapter 14, part 26;

(ii) aerial photographs or images by an agency of the United States government dated prior to October 1, 1997, that depict the county road; and

(iii) easement location depicted on a topographical map to a scale of 1:24,000.

(d) An application for an existing public utility infrastructure must include:

(i) evidence of installation prior to October 1, 1997, through submission of plant staking sheets, photographic evidence of dated infrastructure tags, or similar evidence; and

(ii) easement location depicted on a topographical map to a scale of 1:24,000.

History: En. Sec. 61, Ch. 60, L. 1927; re-en. Sec. 1805.61, R.C.M. 1935; amd. Sec. 1, Ch. 108, L. 1939; amd. Sec. 1, Ch. 99, L. 1951; amd. Sec. 1, Ch. 203, L. 1953; amd. Sec. 1, Ch. 200, L. 1965; amd. Sec. 54, Ch. 428, L. 1973; R.C.M. 1947, 81-803(part); amd. Sec. 1, Ch. 300, L. 1995; amd. Sec. 1, Ch. 277, L. 1999; amd. Sec. 69, Ch. 7, L. 2001; amd. Sec. 1, Ch. 160, L. 2007; amd. Sec. 2, Ch. 309, L. 2023; amd. Sec. 2, Ch. 435, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 435, L. 2025. Amendment effective May 5, 2025.

77-2-103. Processing of application. (1) Upon the filing of an application and plats, the department shall, whenever it considers it necessary, examine the proposed right-of-way and report its findings to the board. The board shall consider the application and report and take any action it considers proper, including the fixing of compensation and damages to be paid to the state. The compensation must be the full market value of the estate or interest disposed of through the granting of the right-of-way easement, and the damages must be the actual damages resulting to the remaining land as nearly as they can be ascertained. If the right-of-way is granted according to the plat, the plat is the official plat of the right-of-way and must be retained in the office of the department.

(2) If the state land over or through which a right-of-way is applied for is under certificate of purchase or sales contract, the purchaser or the purchaser's assignee must be made a party to the proceedings and the purchaser's or assignee's consent in writing to the laying out and establishment of the proposed highway, street, or other easement and to the amount of

compensation and damages to be paid must be filed with the board before the right-of-way is granted. The board is the judge of how much compensation and damages must be paid to the state and applied on the certificate of purchase or sales contract and of how much, if any, must be paid to the purchaser, as the circumstances in each individual case warrant. This subsection applies to all grants of rights-of-way on state lands.

(3) If the purpose of the right-of-way applied for is a regional water authority provided for in Title 75, chapter 6, part 3, the provisions of 77-2-351 related to public entities apply.

(4) A right-of-way easement issued pursuant to 77-2-102(6) is exempt from the requirements of Title 22, chapter 3, part 4, and Title 75, chapter 1, parts 1 and 2.

(5) Damages for a lessee's improvements, crops, or leasehold interests are not allowed for right-of-way easement applications made pursuant to 77-2-102(6).

History: **En. Sec. 61, Ch. 60, L. 1927; re-en. Sec. 1805.61, R.C.M. 1935; amd. Sec. 1, Ch. 108, L. 1939; amd. Sec. 1, Ch. 99, L. 1951; amd. Sec. 1, Ch. 203, L. 1953; amd. Sec. 1, Ch. 200, L. 1965; amd. Sec. 54, Ch. 428, L. 1973; R.C.M. 1947, 81-803(2), (3); amd. Sec. 2, Ch. 300, L. 1995; amd. Sec. 1, Ch. 141, L. 2011; amd. Sec. 3, Ch. 309, L. 2023.**

Cross-References

Full market value for estate or interest in state lands, Art. X, sec. 11, Mont. Const.

77-2-104. Nature of easements. Easements granted under 77-2-102 and 77-2-103 include permission to install and maintain poles, anchors, and other appurtenances necessary for the mechanical support of the transmission or distribution lines.

History: **En. Sec. 61, Ch. 60, L. 1927; re-en. Sec. 1805.61, R.C.M. 1935; amd. Sec. 1, Ch. 108, L. 1939; amd. Sec. 1, Ch. 99, L. 1951; amd. Sec. 1, Ch. 203, L. 1953; amd. Sec. 1, Ch. 200, L. 1965; amd. Sec. 54, Ch. 428, L. 1973; R.C.M. 1947, 81-803(part).**

77-2-105. Termination of easements. Whenever lands granted for any of the purposes mentioned in 77-2-101(8) through (11) cease to be used for those purposes, the easement terminates upon notice to that effect to the person to whom the grant was made, served at the person's last-known post-office address.

History: **En. Sec. 62, Ch. 60, L. 1927; re-en. Sec. 1805.62, R.C.M. 1935; amd. Sec. 2, Ch. 108, L. 1939; R.C.M. 1947, 81-804(part); amd. Sec. 2545, Ch. 56, L. 2009; amd. Sec. 3, Ch. 435, L. 2025.**

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 435, L. 2025. Amendment effective May 5, 2025.

Cross-References

How easement extinguished, 70-17-111.

77-2-106. Charge for granting of easement — in-kind payments for easements. (1) The board shall charge and collect the full market value of the estate or interest disposed of through the granting of any easement and also fix, charge, and collect the amount of the actual damages resulting to the remaining land from the granting of an easement as nearly as the damages can be ascertained.

(2) The board may accept, as lawful consideration, in-kind payments of services and materials equal to the full market value of any easement upon state trust land.

History: **En. Sec. 62, Ch. 60, L. 1927; re-en. Sec. 1805.62, R.C.M. 1935; amd. Sec. 2, Ch. 108, L. 1939; R.C.M. 1947, 81-804(part); amd. Sec. 3, Ch. 18, L. 1999; amd. Sec. 14, Ch. 404, L. 2003.**

Cross-References

Full market value for estate or interest in state lands, Art. X, sec. 11, Mont. Const.

77-2-107. Involvement of lessee when land subject to prior lease. (1) Except as provided in 77-2-103(5), whenever any kind of right-of-way easement has been granted under this part and the state land in which it is granted is under lease, the party receiving the grant shall give timely notice to the lessee and shall make just settlement with the lessee for any damages resulting to the lessee's improvements, crops, or leasehold interests.

(2) After the settlement is made, the lessee shall open or move any fences that may obstruct the right-of-way over the lands under lease and otherwise cooperate in the opening of the right-of-way. Proof must be filed with the board that the settlement has been made before the deed to the easement is issued.

(3) (a) If the lessee and the party receiving the right-of-way easement are unable to agree on the value of the damages resulting from the easement, the value of the damages must be ascertained and fixed by three arbitrators, one of whom must be appointed by the lessee, one by the party receiving the easement, and the third by the two appointed arbitrators.

(b) If a party refuses to appoint an arbitrator within 15 days of being requested to do so by the director of the department, the director may appoint an arbitrator for that party. An arbitrator appointed by the director has the same duties and powers as if appointed by one of the parties.

(c) The arbitrators may fix reasonable compensation for their services. The compensation must be paid in equal shares by the owner of the easement and the lessee.

(d) The value of the damages as ascertained and fixed by the arbitrators is binding on both parties; however, if either party is dissatisfied with the valuation, the party may, within 10 days, appeal from their decision to the department. The department shall examine the easements, and, except as provided in subsection (3)(e), its decision on the appeal is final. The department shall collect the actual cost of the reexamination from the owner of the easement and the lessee in the proportion that, in its judgment, justice may demand.

(e) If either party is dissatisfied with the valuation fixed by the department, the party may within 30 days after receipt of the department's decision petition the district court in the county in which the majority of the state land is located for judicial review of the decision.

History: **En. Sec. 63, Ch. 60, L. 1927; re-en. Sec. 1805.63, R.C.M. 1935; amd. Sec. 3, Ch. 108, L. 1939; R.C.M. 1947, 81-805; amd. Sec. 1, Ch. 39, L. 1983; amd. Sec. 318, Ch. 418, L. 1995; amd. Sec. 45, Ch. 535, L. 2021; amd. Sec. 4, Ch. 309, L. 2023.**

Cross-References

Arbitration, Title 27, ch. 5.

77-2-108. Repealed. Sec. 4, Ch. 157, L. 1981.

History: **En. Sec. 56, Ch. 60, L. 1927; amd. Secs. 1, 2, 3 and 4, Ch. 37, Ex. L. 1933; re-en. Sec. 1805.56, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1945; amd. Sec. 52, Ch. 428, L. 1973; R.C.M. 1947, 81-801(2), (3).**

Part 2
Exchanges of Land

Part Cross-References

Authority of Board to exchange land, Art. X, sec. 4, Mont. Const.

77-2-201. Exchange of land with United States or tribal governments. (1) (a) The board may enter into contracts or agreements with the United States or any department thereof having jurisdiction for the waiving and relinquishment to the United States of any rights of the state in and to sections 16 and 36 of any township and to any other parcel of state lands, provided that the state shall, in lieu of the rights so waived and relinquished, receive from the United States other lands of equal or greater value.

(b) The current user of the land transferred to the United States may continue to enjoy the use of the land under terms and conditions required by the federal government and in accordance with Public Law 88-607, as amended, (43 U.S.C. 1411 through 1418), and the current user of the land received from the United States may continue to utilize the land on the terms and conditions imposed by law or by the board.

(2) The board may enter into a contract or agreement with a tribal government as defined in 18-11-102 or with the United States for the relinquishment to the tribal government or to the United States in trust for the tribal government of any rights of the state to some or all state lands located wholly within the exterior boundaries of the tribal government's reservation as recognized by the federal government; however, the state, in exchange for these relinquished rights, must receive from the tribal government or the United States lands of equal or greater value. No contract or agreement may be entered into under this section without first consulting with the board of county commissioners of the county or counties in which the lands to be exchanged are located.

History: **En. Sec. 19, Ch. 60, L. 1927; amd. Sec. 1, Ch. 151, L. 1933; re-en. Sec. 1805.19, R.C.M. 1935; amd. Sec. 1, Ch. 117, L. 1951; amd. Sec. 1, Ch. 257, L. 1965; amd. Sec. 1, Ch. 39, L. 1967; amd. Sec. 9, Ch. 428, L. 1973; R.C.M. 1947, 81-304(1), (3); amd. Sec. 7, Ch. 15, L. 1979; amd. Sec. 1, Ch. 628, L. 1985.**

Cross-References

Restrictions on exchange of lands with United States, The Enabling Act, sec. 11 (see anno. vol. 1).

Status of exchanged lands, 77-2-217.

77-2-202. Repealed. Sec. 3, Ch. 139, L. 2001.

History: **En. Sec. 19, Ch. 60, L. 1927; amd. Sec. 1, Ch. 151, L. 1933; re-en. Sec. 1805.19, R.C.M. 1935; amd. Sec. 1, Ch. 117, L. 1951; amd. Sec. 1, Ch. 257, L. 1965; amd. Sec. 1, Ch. 39, L. 1967; amd. Sec. 9, Ch. 428, L. 1973; R.C.M. 1947, 81-304(2).**

77-2-203. Exchange for nongovernment, state government, and other state and local public entity land. (1) Subject to subsection (2), the board is authorized to exchange state land for land owned by:

(a) the state or an agency of the state;

(b) a political subdivision of the state, including a county, city, town, public corporation, or district created pursuant to state law;

(c) any other public body of the state; or

(d) a nongovernmental entity, including but not limited to an individual, association, partnership, or corporation.

(2) The board may exchange the land described in subsection (1) if the land is of equal or greater value, as determined by the board after appraisal by a qualified land appraiser, than the state land and as closely as possible equal in area. The contents of the appraisal must be made available to any person who makes a written request to the board. The board shall place priority on exchanges that result in consolidation of state lands into more compact bodies. This section does not apply to exchanges undertaken under 76-12-107.

(3) If the requirements of 77-2-204 and subsections (1) and (2) of this section are met, state lands bordering on navigable lakes and streams or other bodies of water with significant public use value may be exchanged for nongovernment-owned land if the nongovernment-owned land borders on similar navigable lakes, streams, or other bodies of water.

History: En. Sec. 1, Ch. 472, L. 1975; R.C.M. 1947, 81-307(1), (3); amd. Sec. 2, Ch. 136, L. 1983; amd. Sec. 1, Ch. 287, L. 1985; amd. Sec. 1, Ch. 139, L. 2001.

77-2-204. Notification of proposed exchange — hearing. (1) Upon receipt of a proposal for an exchange of land under this part, the board shall give notice of the proposed exchange by certified mail to each person who has leased, under chapter 1 of this title, any portion of land involved in the proposed exchange. Any such leaseholder may present written or oral comments on the proposed exchange to the board before or during the hearing required by subsection (2). The notice must contain a statement informing the recipient of this right to comment.

(2) A public hearing on any exchange under this part shall be held in the county containing the state land to be exchanged. When specific objections to the proposed exchange are raised before or during any such hearing pursuant to subsection (1), the board shall make findings of fact responding to such objections and explaining their action.

History: En. Sec. 1, Ch. 472, L. 1975; R.C.M. 1947, 81-307(2); amd. Sec. 2, Ch. 287, L. 1985.

77-2-205. Restriction on exchange for nongovernment-owned land. An exchange for nongovernment-owned land under 77-2-203 may not be made that will induce or encourage large-scale commercial, industrial, or residential development unless the development value is considered in determining the fair market value and unless the proposed development will not adversely affect the resources of the existing state tracts or those tracts that the state would receive under the proposed exchange.

History: En. Sec. 1, Ch. 472, L. 1975; R.C.M. 1947, 81-307(4); amd. Sec. 2, Ch. 139, L. 2001.

77-2-206. Settlement for improvements. If any state land is exchanged on which there are improvements belonging to a lessee and some person other than the lessee is the transferee, that person shall settle with the lessee for all improvements on the land belonging to the lessee before the exchange is completed. The provisions of 77-6-301 through 77-6-303 and 77-6-306 relating to the payment and settlement for improvements on state lands between a former lessee and a new lessee apply to the settlement between a lessee and the transferee in an exchange. If settlement is not reached within 6 months of the date of exchange, all improvements become the property of the state unless the department for good cause shown grants both parties additional time in which to exhaust arbitration.

History: En. Sec. 4, Ch. 287, L. 1985; amd. Sec. 3, Ch. 270, L. 2001.

77-2-207. Approval or disapproval of exchanges. All exchanges of state lands are subject to approval and confirmation by the board, and no exchange is considered completed until after such approval and confirmation. The board has the power and it is its duty to disapprove any exchange which in its opinion would be disadvantageous to the state.

History: En. Sec. 3, Ch. 287, L. 1985.

77-2-208 through 77-2-210 reserved.

77-2-211. Exchange of timbered, cut-over, or burned-over lands. The board may accept on behalf of the state title in fee simple to any timbered lands or lands from which the timber has been cut or burned and in exchange may convey lands not to exceed an equal value, as determined by the board after appraisal by a qualified land appraiser, of similar state land. However, an exchange may not be made unless the exchange, in the opinion of the board, will benefit the public interest. For the purpose of an exchange, all state lands, including those referred to in 77-2-303(2), 77-2-311, and 77-5-101, are subject to be offered for exchange, and any restrictions against their sale or disposal are, for the purpose of an exchange, released.

History: En. Sec. 1, Ch. 180, L. 1931; re-en. Sec. 1995.1, R.C.M. 1935; amd. Sec. 99, Ch. 428, L. 1973; R.C.M. 1947, 81-2201; amd. Sec. 3, Ch. 136, L. 1983; amd. Sec. 4, Ch. 18, L. 1999.

77-2-212. Rules. The board shall adopt and promulgate such rules and methods of procedure affecting or touching the exchanges of lands under 77-2-211 through 77-2-217 as in its judgment seems advisable to the end that the public interests may be conserved.

History: En. Sec. 5, Ch. 180, L. 1931; re-en. Sec. 1995.5, R.C.M. 1935; amd. Sec. 103, Ch. 428, L. 1973; R.C.M. 1947, 81-2205.

Cross-References

Promulgation of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

77-2-213. Department to investigate. (1) When a proposal for an exchange pursuant to 77-2-211 is made and the owners of the respective tracts involved seem agreeable to negotiate exchanges, the proposal must be referred to the department and the department shall thoroughly investigate all the lands involved in the proposal, estimate the value of all of the lands, and consider every factor in connection with the proposal that may affect the public interest.

(2) The estimated fair market value must be determined by a Montana-licensed and Montana-certified appraiser.

History: En. Sec. 2, Ch. 180, L. 1931; re-en. Sec. 1995.2, R.C.M. 1935; amd. Sec. 100, Ch. 428, L. 1973; R.C.M. 1947, 81-2202; amd. Sec. 2, Ch. 286, L. 1985; amd. Sec. 1, Ch. 456, L. 2007.

77-2-214. Investigation and findings concerning exchange of land. (1) The department shall, as soon as it concludes its investigation thereof, report to the board the facts disclosed by its investigation and include in its report a recommendation concerning the proposal, including its reasons therefor in writing.

(2) After considering the report and recommendation and making such further investigation as it considers advisable, the board shall consider the entire matter, make findings and conclusions concerning the proposal, and make an order:

(a) rejecting and dismissing the proposal if in the judgment of the board the exchange is not in the public interest; or

(b) accepting the proposal and ordering the exchange to be made if in the judgment of the board the exchange is in the public interest and should be made.

(3) An order accepting the proposal shall contain an accurate description of all lands to be exchanged.

History: En. Sec. 3, Ch. 180, L. 1931; re-en. Sec. 1995.3, R.C.M. 1935; amd. Sec. 101, Ch. 428, L. 1973; R.C.M. 1947, 81-2203; amd. Sec. 8, Ch. 15, L. 1979; amd. Sec. 3, Ch. 286, L. 1985.

77-2-215. Notice and hearing concerning exchange of timbered lands. If the board approves a proposal for exchange pursuant to 77-2-211, the department shall publish at least once in a newspaper of general circulation in each county in which any of the lands involved are located a notice stating in general terms the proposal and describing the lands involved and the ownership of the lands. The notice must fix a day not less than 20 and not more than 60 days from the date of the first publication at which the board will hear objections to the proposed exchange and at which any person, firm, or corporation may appear in person or by representative and be heard.

History: En. Sec. 4, Ch. 180, L. 1931; re-en. Sec. 1995.4, R.C.M. 1935; amd. Sec. 102, Ch. 428, L. 1973; R.C.M. 1947, 81-2204(1); amd. Sec. 319, Ch. 418, L. 1995.

77-2-216. Final order of board. The board shall make a final order describing the terms of the proposal for the exchange of the land involved and shall either dismiss the proposal as not being in the public interest or direct the proper officers to proceed to complete the exchange, as authorized by 77-2-211.

History: En. Sec. 4, Ch. 180, L. 1931; re-en. Sec. 1995.4, R.C.M. 1935; amd. Sec. 102, Ch. 428, L. 1973; R.C.M. 1947, 81-2204(2); amd. Sec. 1, Ch. 184, L. 1985.

77-2-217. Status of exchanged lands. All lands taken in exchange under 77-2-211 through 77-2-216 for lands granted by the United States to the state of Montana prior to July 1, 1931, shall be subject to the same restrictions, limitations, and provisions as the lands granted by the United States are now subject to. All lands granted by the state in carrying out such exchanges shall thereafter be free from the restrictions and limitations provided by The Enabling Act of the state of Montana or the other grant from the United States.

History: En. Sec. 6, Ch. 180, L. 1931; re-en. Sec. 1995.6, R.C.M. 1935; R.C.M. 1947, 81-2206(part).

Cross-References

Exchange of lands with United States, 77-2-201.

Part 3
Sales

Part Cross-References

Sale of state lands — disposition, Art. X, sec. 11, Mont. Const.
Public sales of state lands, The Enabling Act, sec. 11 (see anno. vol. 1).
Authority of Board — sales, 77-1-204.
Sale of leased cabin or home sites or city or town lots, 77-2-318.

77-2-301. Sales of state land under board control. The board may decide when sales of state land are to be held and what state lands are to be offered for sale, subject to the limitations of this title, as the best interests of the state may appear to require.

History: En. Sec. 70, Ch. 60, L. 1927; re-en. Sec. 1805.70, R.C.M. 1935; R.C.M. 1947, 81-907; amd. Sec. 1, Ch. 602, L. 1989; amd. Sec. 5, Ch. 355, L. 2003.

77-2-302. Disposition of former institutions and certain federal land grants. (1) Notwithstanding any other section in this chapter, any lands, including buildings, that were formerly used as or by a state institution and that are no longer used for institutional purposes may be disposed of in whole or in part on the terms and in the manner that the board, after consultation with the appropriate legislative committee, may determine to be in the state's best interest, subject to The Enabling Act and constitutional restrictions. Disposal of the property may not be finally concluded until 60 days' public notice of the terms of the proposed disposal has been given.

(2) Notwithstanding any other section in this chapter, any lands, including buildings, granted to the state by the United States pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq., or acquired by the state as remedial action pursuant to 75-10-704, 75-10-711, or 75-10-712 may be disposed of in whole or in part on the terms and in the manner that the board, after consultation with the director of the department of environmental quality, determines to be in the state's best interest.

History: En. 81-907.1 by Sec. 1, Ch. 410, L. 1977; R.C.M. 1947, 81-907.1; amd. Sec. 3, Ch. 274, L. 1989; amd. Sec. 320, Ch. 418, L. 1995.

Cross-References

Use or disposition of facility, 53-20-505.
Who may purchase, 77-2-306.

77-2-303. Restrictions on land available for sale. (1) Land that in the judgment of the department is likely to contain valuable deposits of coal, oil, oil shale, phosphate, metals, sodium, or other valuable mineral deposits is not subject to sale of either the surface land or any of the mineral deposits. However, this subsection does not prohibit the sale of lands containing sand, gravel, building stone, brick clay, or similar materials.

(2) (a) Except any lands previously leased as cabin sites, there is reserved from sale from all state land bordering on navigable lakes, nonnavigable meandered lakes, and navigable streams, that the board considers in the best interests of the state, a strip of land that includes all the land lying between the low-water mark and high-water mark and that extends in width landward from the line of the high-water mark of the lake or stream the full width of the 40-acre tract or government lot abutting the line of the high-water mark. If the width of the abutting government lot at its narrowest point is less than 100 feet, then the strip reserved must extend

to and include the next adjoining 40-acre tract or government lot. The land reserved from sale by this subsection is subject to the granting of easements the same as other state lands.

(b) Strips of land bordering on meandering lakes or on navigable streams, except the strip lying between the low-water and high-water mark, whether surveyed and platted into blocks and lots or not, may be leased as provided in this title for the leasing of other state lands.

History: **(1), (2)En. Sec. 64, Ch. 60, L. 1927; re-en. Sec. 1805.64, R.C.M. 1935; amd. Sec. 55, Ch. 428, L. 1973; Sec. 81-901, R.C.M. 1947; (3)En. Sec. 66, Ch. 60, L. 1927; re-en. Sec. 1805.66, R.C.M. 1935; amd. Sec. 7, Ch. 257, L. 1965; Sec. 81-903, R.C.M. 1947; R.C.M. 1947, 81-901, 81-903(part); amd. Sec. 2, Ch. 602, L. 1989; amd. Sec. 5, Ch. 18, L. 1999; amd. Sec. 6, Ch. 418, L. 2001; amd. Sec. 8, Ch. 17, L. 2013; amd. Sec. 1, Ch. 422, L. 2013.**

Cross-References

Exchange of state riparian land for private riparian land, 77-2-203.
Exchange of timbered, cut-over, burned-over, or riparian lands, 77-2-211.
Leases:
nonmetallic minerals, excluding coal, oil, and gas, Title 77, ch. 3, part 2.
coal, Title 77, ch. 3, part 3.
oil and gas, Title 77, ch. 3, part 4.
Hydroelectric powersites — sale prohibited, 77-4-201.
State forests, Title 77, ch. 5, part 1.
Riparian ownership subject to fishing rights between highwater lines, 87-2-305.

77-2-304. Mineral reservations in state land. All coal, oil, oil shale, gas, phosphate, sodium, and other mineral deposits in state land, except sand, gravel, building stone, and brick clay, which were not reserved by the United States before July 1, 1927, are reserved to the state. Those deposits are reserved from sale except upon a rental and royalty basis as provided by law. A purchaser of state land acquires no right, title, or interest in or to any of those deposits. The state also reserves for itself and its lessees the right to enter upon state land to prospect for, develop, mine, and remove mineral deposits and to occupy and use so much of the surface of the land as may be required for all purposes reasonably extending to the exploring for, mining, and removal of the deposits from the land, but the lessee shall make just payment to the purchaser for all damage done by reason of entry upon the land and the use and occupancy of the surface of the land.

History: **En. Sec. 65, Ch. 60, L. 1927; amd. Sec. 1, Ch. 28, L. 1929; amd. Sec. 1, Ch. 183, L. 1935; re-en. Sec. 1805.65, R.C.M. 1935; amd. Sec. 1, Ch. 184, L. 1961; amd. Sec. 56, Ch. 428, L. 1973; R.C.M. 1947, 81-902; amd. Sec. 1, Ch. 157, L. 1981; amd. Sec. 7, Ch. 418, L. 2001; amd. Sec. 9, Ch. 17, L. 2013.**

Cross-References

Reservation in certificate of purchase, 77-2-327.
Reservation in patent, 77-2-343.
Mining leases — bond to protect rights of prior purchaser, 77-3-120.
Sales, contracts for sale, and leases subject to mining leases, 77-3-122.
Coal leases — care taken to protect rights of prior purchasers, 77-3-304.
Oil and gas leases — care taken to protect rights of prior purchasers, 77-3-401.
Geothermal leases — compensation for damages to surface lessee, 77-4-107.

77-2-305. Lands within federal irrigation projects. Whenever state lands are located within the boundaries of federal irrigation projects, the land shall be sold in conformity with the classification of farm units as made by the United States, and all certificates of purchase issued for such lands shall show that the lands are located within a federal irrigation project and are or will be liable for their proper share of the reclamation charges.

History: **En. Sec. 69, Ch. 60, L. 1927; re-en. Sec. 1805.69, R.C.M. 1935; R.C.M. 1947, 81-906.**

Cross-References

Form of patent lien clause, 77-2-343.

77-2-306. Who may purchase. (1) State land may be sold to any person who is 18 years of age or older or any governmental or private entity including tribal governments as defined in 18-11-102.

(2) A sale involving land in excess of 160 acres may not be made under this section without first consulting with the board of county commissioners of the county or counties in which the lands to be sold are located.

(3) State land may not be sold to the federal government or to an agency of the federal government, except for the purpose of building federal facilities and structures. Nothing in this section prohibits the sale of state land to a tribal government as defined in 18-11-102.

(4) A local government that sold or transferred property to the state has the right of first refusal if the state subsequently offers the property for sale. For purposes of this subsection,

"right of first refusal" means the right to have the first opportunity to purchase the property for not less than fair market value when the property becomes available or the right to meet any other offer.

History: En. Sec. 71, Ch. 60, L. 1927; re-en. Sec. 1805.71, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1949; amd. Sec. 1, Ch. 10, L. 1959; amd. Sec. 2, Ch. 184, L. 1961; amd. Sec. 19, Ch. 240, L. 1971; amd. Sec. 31, Ch. 94, L. 1973; R.C.M. 1947, 81-908(part); amd. Sec. 2, Ch. 628, L. 1985; amd. Sec. 1, Ch. 313, L. 1991; amd. Sec. 1, Ch. 326, L. 2003; amd. Sec. 6, Ch. 355, L. 2003.

77-2-307. Repealed. Sec. 18, Ch. 355, L. 2003.

History: En. Sec. 71, Ch. 60, L. 1927; re-en. Sec. 1805.71, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1949; amd. Sec. 1, Ch. 10, L. 1959; amd. Sec. 2, Ch. 184, L. 1961; amd. Sec. 19, Ch. 240, L. 1971; amd. Sec. 31, Ch. 94, L. 1973; R.C.M. 1947, 81-908(part); amd. Sec. 3, Ch. 628, L. 1985.

77-2-308. Approval or disapproval of sales. All sales of state lands shall be subject to the approval and confirmation by the board, and no sale shall be deemed completed until after such approval and confirmation. The board shall have the power and it shall be its duty to disapprove any sale which in its opinion would be disadvantageous to the state.

History: En. Sec. 82, Ch. 60, L. 1927; re-en. Sec. 1805.82, R.C.M. 1935; R.C.M. 1947, 81-918(part).

77-2-309. Discretion of board with respect to surveying and platting. The board has the option of determining whether or not state land must be surveyed, platted, and laid off into blocks and lots.

History: En. Sec. 68, Ch. 60, L. 1927; re-en. Sec. 1805.68, R.C.M. 1935; amd. Sec. 41, Ch. 100, L. 1973; R.C.M. 1947, 81-905(part); amd. Sec. 7, Ch. 355, L. 2003.

77-2-310. Certain lands to be platted before sale. (1) Any part of state lands that in the opinion of the board may be sold for residential or commercial purposes must before sale, at such time as the board may consider to be in the best interests of the state, be surveyed in conformity with the laws of the state for the survey and platting of townsites and additions. Except to the extent that the following provisions violate Article X, section 4 or 11, of the Montana constitution, the board and the department shall consider the ordinances of the appropriate city or town or the resolutions of the appropriate county regarding:

(a) a growth policy or a neighborhood plan adopted pursuant to Title 76, chapter 1;

(b) zoning regulations;

(c) subdivision review as provided in Title 76, chapter 3;

(d) annexation;

(e) plans for the extension of services; and

(f) other actions related to local planning.

(2) The board shall cause correct maps and plats of the lands to be made and recorded after being surveyed. A fee may not be charged by the county recorder or by any city officer for filing or recording the maps or plats when recorded on behalf of the state.

(3) Before the lands are offered for sale the lands must be appraised, with a separate appraisal to be placed on each lot. The surveyed and platted land may then be sold in the same manner and upon the same terms and conditions as other state lands are sold.

History: En. Sec. 67, Ch. 60, L. 1927; re-en. Sec. 1805.67, R.C.M. 1935; R.C.M. 1947, 81-904; amd. Sec. 3, Ch. 335, L. 2005.

Cross-References

Montana Subdivision and Platting Act — applicability, 76-3-205.

77-2-311. Survey and plat of shore lands. The board may cause any part of the lands bordering on lakes described in 77-2-303(2) and on navigable streams that are reserved from sale to be surveyed and platted into blocks and lots. The lots may not be less than 125 feet in width, measured in the general direction of the abutting water front, except that any former cabin or home sites proposed for sale or sold by the board may possess a width less than 125 feet. In all surveys and plats the strip of 100 feet in width along the water front, referred to in 77-2-303(2)(a), must be reserved for the use and enjoyment of the public. Cabin sites or home sites bordering on meandered lakes or navigable streams may be surveyed and sold consistent with the procedures provided in 77-2-361 through 77-2-367.

History: En. Sec. 66, Ch. 60, L. 1927; re-en. Sec. 1805.66, R.C.M. 1935; amd. Sec. 7, Ch. 257, L. 1965; R.C.M. 1947, 81-903(part); amd. Sec. 6, Ch. 18, L. 1999; amd. Sec. 2, Ch. 422, L. 2013.

Cross-References

Recreational use of streams, Title 23, ch. 2, part 3.

Subject to exchange for timbered, cut-over, or burned-over land, 77-2-211.

77-2-312. Repealed. Sec. 18, Ch. 355, L. 2003.

History: En. Sec. 68, Ch. 60, L. 1927; re-en. Sec. 1805.68, R.C.M. 1935; amd. Sec. 41, Ch. 100, L. 1973; R.C.M. 1947, 81-905(part); amd. Sec. 1, Ch. 155, L. 1993.

77-2-313. Land subject to taxation. (1) State lands purchased from the state are subject to taxation. The department of revenue shall assess the purchaser for the full value of the land on January 1 following the date of purchase. The holder of certificates of purchase to lands within an irrigation district is liable for the entire irrigation district tax levied against the land.

(2) The improvements on the land must be assessed and taxed as other improvements on farm lands.

(3) On or before January 15 of each year, the department shall furnish the department of revenue with a complete list of all state lands sold in each county during the previous calendar year. This list must show the name and address of the purchaser, the legal description of the land, and the acreage contained in the purchase.

History: En. Sec. 92, Ch. 60, L. 1927; re-en. Sec. 1805.92, R.C.M. 1935; amd. Sec. 1, Ch. 107, L. 1953; amd. Sec. 52, Ch. 391, L. 1973; amd. Sec. 67, Ch. 428, L. 1973; amd. Sec. 7, Ch. 388, L. 1975; R.C.M. 1947, 81-928; amd. Sec. 143, Ch. 27, Sp. L. November 1993.

Cross-References

Property subject to taxation — classification, 15-6-101.
Lands within federal irrigation projects, 77-2-305.
Taxes and assessments — irrigation districts, Title 85, ch. 7, part 21.

77-2-314. Reversion of lands to state. If any lands sold under this title revert to the state for any reason, the department shall notify the department of revenue and the county treasurer of the county in which the land is situated of that fact. Upon the receipt of the notice, the department of revenue shall cancel any assessment of the land for that year, and the county treasurer shall cancel all tax liens against the land.

History: En. Sec. 94, Ch. 60, L. 1927; re-en. Sec. 1805.94, R.C.M. 1935; amd. Sec. 53, Ch. 391, L. 1973; amd. Sec. 68, Ch. 428, L. 1973; R.C.M. 1947, 81-930.

Cross-References

Exemption from property taxes — state land, 15-6-201.

77-2-315. Participation in irrigation districts — lien status of land. (1) A purchaser of state lands is authorized and empowered to sign any petition that the purchaser may desire to sign for the creation of an irrigation district and the inclusion of the land purchased from the state in the irrigation district and any other petition relating to irrigation districts affecting the land purchased by the person from the state. The petition or petitions have the effect of making all the interest that the person then has in the land purchased from the state and all interest that the person may subsequently acquire in the land subject to the same liens and charges as privately owned lands under the irrigation district. If for any reason the person's certificate to the state lands and the person's rights under the certificate are canceled and the certificate is reinstated or a new certificate is issued, the liens and charges are valid against the interest in the lands of the holder of the certificate.

(2) The board for and on behalf of the state of Montana may sign a petition for the inclusion of any lands belonging to the state in an irrigation district organized or to be organized for the purpose of cooperating with the United States under the federal reclamation laws or any act of congress relating to reclamation projects and to sign any petition for the execution of a contract between the district and the United States. The interest of the state in any lands within an irrigation district is not subject to assessment or taxation for any purpose, and the state is not liable for the payment of any costs or charges arising from the fact that its lands are included within an irrigation district.

(3) The interest of a purchaser of state lands in the land purchased is subject to the same liens as other real estate. However, in the case of sale, only the interest of the purchaser or of the assignee may be sold. In the case of any sale under the provisions of this section, including the sale for taxes, the purchaser shall succeed to all the rights of the purchaser from the state under the certificate of purchase and a new certificate of purchase must be issued to the person entitled to the certificate upon satisfactory proof being submitted to the board. In the case of sale under execution or court decree, the new certificate of purchase may not be issued by the board until the period of redemption from the sale has expired and the sheriff's deed has been issued. In the case of sale for taxes, the new certificate may not be issued until the tax deed has been issued.

History: En. Sec. 93, Ch. 60, L. 1927; amd. Sec. 1, Ch. 58, L. 1929; re-en. Sec. 1805.93, R.C.M. 1935; R.C.M. 1947, 81-929; amd. Sec. 2546, Ch. 56, L. 2009.

Cross-References

Tax deeds — ownership interests in land sold for taxes, Title 15, ch. 18.
Period of redemption — reinstatement of canceled certificates of purchase, 77-2-333.
Petition for organization of water district, 85-7-104.
Irrigation district special tax or assessment — lien, 85-7-2108.

77-2-316. Repealed. Sec. 4, Ch. 157, L. 1981.

History: En. Sec. 56, Ch. 60, L. 1927; amd. Secs. 1, 2, 3 and 4, Ch. 37, Ex. L. 1933; re-en. Sec. 1805.56, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1945; amd. Sec. 52, Ch. 428, L. 1973; R.C.M. 1947, 81-801(1), (5), (6).

77-2-317. Valuation of cabin or home site and improvements — rulemaking. (1) (a) Prior to the board's approval of any sale of state land leased as a cabin or home site or state land with a vacant cabin or home site as provided in 77-2-318, the board shall separately determine the full market value of the land and the value of the cabin site improvements existing on the land and the value of any necessary access easement across existing state lands from the nearest public road. The appraisal to determine these values must be based upon comparable sales of nearby existing properties with the hypothetical condition that the state parcel to be sold is accessible for all lawful purposes. The appraisal must determine the raw undeveloped value of the parcel and the value of the cabin site improvements.

(b) (i) In determining the value of state land leased as a cabin or home site pursuant to subsection (1)(a), the department shall establish a list that is acceptable to the board of no fewer than two third-party independent appraisers that are available to conduct the appraisal of the land and the cabin site improvements. The department shall provide a copy of the list to the cabin site or home site lessee. The lessee shall provide the department with a list of at least 50% of the appraisers from the department's list. The department shall select the appraiser to conduct the appraisal from the list provided by the lessee.

(ii) The department shall assume the proportionate cost of the appraisal of the state land valuation. The lessee shall assume the proportionate cost of the appraisal of the valuation of the cabin site improvements.

(c) The board shall disclose the results of the appraisal to the cabin site or home site lessee of the land for sale and shall give that lessee notice and opportunity for an administrative hearing before the department to contest those valuations. The department shall review the arguments and evidence received at the hearing to make a recommendation of the values of the land and the cabin site improvements to the board. The board shall make a final determination on the values of the land and cabin site improvements.

(2) (a) If the lessee consents to the terms and conditions of the proposed sale and the valuation of cabin site improvements, the sale must proceed utilizing the board's final determination of the values, and the lessee is obligated to transfer its interest in the cabin site improvements existing on the cabin or home site lease according to the board's final determination of their value.

(b) Nothing in this section prohibits the lessee from accepting a price for the cabin site improvements existing on the cabin or home site that is less than the board's final determination of value.

(3) For purposes of 77-2-318 and this section, "cabin site improvements" includes but is not limited to:

(a) a home or residence;
(b) outbuildings and structures;
(c) sleeping cabins;
(d) utilities;
(e) water systems;
(f) septic systems;
(g) docks; and
(h) landscaping.

(4) The board may adopt rules to implement the provisions of this section.

History: En. Sec. 6, Ch. 422, L. 2013.

77-2-318. Sale of leased cabin or home sites. (1) (a) The board shall, consistent with the board's constitutional fiduciary duty of attaining full market value, make available for sale within a reasonable period of time as provided in this part those lands that were state land cabin or home sites on May 6, 2013, at the request of a lessee or an improvement owner and with the consent of any mortgagee or other owner of an interest in the cabin or home site improvements, only if the requested sale is consistent with the board's constitutional fiduciary duty of attaining full market value and with the provisions of this part and if the sale is approved by the board.

(b) (i) The disposition of proceeds of any sale of state land property pursuant to this section must comply with the provisions of 77-2-337.

(ii) The proceeds of any sale of cabin site improvements pursuant to this part must go to the owner of record of the improvements.

(2) The sale of a cabin or home site is exempt from the subdivision laws, except that the development of any new or additional water supply or sewage disposal system on the property must be approved pursuant to the review procedure, fee, and other requirements of Title 76, chapter 4, part 1.

(3) The board may adopt rules to ensure that the sales process authorized pursuant to this section is orderly and consistent with its constitutional fiduciary duties and that the number of leased cabin or home sites made available for sale at any given time is consistent with the board's constitutional duty of attaining full market value.

(4) Upon a sale of a cabin or home site, the board may:

(a) grant a permanent easement across state lands to secure access using current routes; or

(b) convey an appurtenant, nonexclusive easement to the property from the nearest public road if:

(i) the board has authority to grant the easement; and

(ii) the conveyance of the easement does not overburden a right-of-way held by the board.

(5) The appraised value and minimum bid for a cabin or home site must include the value of the easement granted pursuant to subsection (4).

(6) For purposes of this section, "cabin site improvements" has the meaning provided in 77-2-317.

History: En. Sec. 3, Ch. 602, L. 1989; amd. Sec. 76, Ch. 472, L. 1997; amd. Sec. 4, Ch. 401, L. 2011; amd. Sec. 3, Ch. 422, L. 2013; amd. Sec. 1, Ch. 268, L. 2015; amd. Sec. 1, Ch. 184, L. 2017.

77-2-319. Repealed. Sec. 5, Ch. 401, L. 2011.

History: En. Sec. 4, Ch. 602, L. 1989.

77-2-320. Repealed. Sec. 7, Ch. 422, L. 2013.

History: En. Sec. 5, Ch. 602, L. 1989.

77-2-321. Sales to be at public auction. All sales of state lands shall be only at public auction held at the county courthouse of the county in which the lands are located. In case no suitable room can be found in such courthouse at the time for holding the sale, then the sale may be transferred to a more convenient place within a reasonable distance of such courthouse by public announcement made at the courthouse at the time fixed for beginning the sale.

History: En. Sec. 72, Ch. 60, L. 1927; re-en. Sec. 1805.72, R.C.M. 1935; amd. Sec. 3, Ch. 184, L. 1961; R.C.M. 1947, 81-909.

Cross-References

Public sale after advertising required, The Enabling Act, sec. 11 (see anno. vol. 1).

77-2-322. Notice of sale. (1) The department shall give notice of each sale by publication in a newspaper of general circulation in the county where the sale is to be held, once each week through the 4 consecutive weeks preceding the date of sale. The notice shall give the day, date, and time of the beginning of the sale and contain a list of all the tracts to be offered for sale showing the township and range in which they are located, describing them with reference to section number and subdivision of the section or with reference to block and lot if surveyed, the number of acres in unplatted lands, and the appraised value per acre and the appraised value of each lot. As a general rule, nonirrigable farming lands shall be listed in quarter sections; grazing lands may be listed in larger tracts not exceeding one section.

(2) For the convenience of the bidders, the department may assign to the tracts advertised a consecutive series of sales numbers and show the sales number of each tract in the notice of sale.

(3) The notice shall also give the terms and conditions of sale and any additional information the department considers useful.

History: En. Sec. 73, Ch. 60, L. 1927; re-en. Sec. 1805.73, R.C.M. 1935; amd. Sec. 4, Ch. 184, L. 1961; amd. Sec. 57, Ch. 428, L. 1973; R.C.M. 1947, 81-910.

Cross-References

Advertising required for sale of state land, The Enabling Act, sec. 11 (see anno. vol. 1).

77-2-323. Sale procedure and limitation. (1) At the time fixed for the sale, state land must be offered for sale at auction in the order that the land appears in the notice of sale. Under the direction of the department, the state land must be sold to the highest qualified bidder. State land may not be sold for less than the value determined by the board after appraisal by a qualified land appraiser.

(2) The state land must be sold as nearly as practicable according to the subdivisions in which it is advertised, and care must be taken not to subdivide any tract in such a way as to separate remaining portions from a water supply or from section lines or public highways.

(3) The sale may be adjourned from day to day until all the state land advertised has been offered for sale.

History: En. Sec. 75, Ch. 60, L. 1927; amd. Sec. 1, Ch. 177, L. 1933; re-en. Sec. 1805.75, R.C.M. 1935; amd. Sec. 5, Ch. 184, L. 1961; amd. Sec. 58, Ch. 428, L. 1973; R.C.M. 1947, 81-912(part); amd. Sec. 4, Ch. 136, L. 1983; amd. Sec. 58, Ch. 422, L. 1997; amd. Sec. 8, Ch. 355, L. 2003.

Cross-References

Requirements of minimum prices, The Enabling Act, sec. 11 (see anno. vol. 1).
Initial payment on day of sale, 77-2-329.

77-2-324. Preference to lessee of land. The lessee of the land need not make a higher bid than others, but the lessee has the option to match the high bid and must be given the preference. If the lessee matches the high bid, bidding must be reopened to all bidders, with the lessee retaining the right of preference to match the ultimate high bid and be awarded the sale.

History: En. Sec. 75, Ch. 60, L. 1927; amd. Sec. 1, Ch. 177, L. 1933; re-en. Sec. 1805.75, R.C.M. 1935; amd. Sec. 5, Ch. 184, L. 1961; amd. Sec. 58, Ch. 428, L. 1973; R.C.M. 1947, 81-912(part); amd. Sec. 6, Ch. 602, L. 1989; amd. Sec. 2547, Ch. 56, L. 2009.

Cross-References

Disposition of former institutions, 77-2-302.

77-2-325. Settlement for improvements. Except for the sale of a cabin or home site, if any state land is sold on which there are improvements belonging to a lessee and some person other than the lessee is the purchaser, that person shall settle with the lessee for all improvements on the land belonging to the lessee before the issuance of the certificate of purchase. The provisions of 77-6-301 through 77-6-303 and 77-6-306 relating to the payment and settlement for improvements on state lands between a former lessee and a new lessee apply to the settlement between a lessee and the purchaser. If settlement is not reached within 6 months of the date of sale, all improvements become the property of the state unless the department for good cause shown grants both parties additional time in which to exhaust arbitration.

History: En. Sec. 83, Ch. 60, L. 1927; re-en. Sec. 1805.83, R.C.M. 1935; amd. Sec. 9, Ch. 257, L. 1965; amd. Sec. 61, Ch. 428, L. 1973; R.C.M. 1947, 81-919; amd. Sec. 4, Ch. 270, L. 2001; amd. Sec. 2, Ch. 268, L. 2015.

77-2-326. Time of possession. In the case of lands under lease the purchaser shall be given possession by the state on March 1 next succeeding the date of sale and not before unless the lease expires prior to that date, except through special agreement between the purchaser and the lessee.

History: En. Sec. 84, Ch. 60, L. 1927; re-en. Sec. 1805.84, R.C.M. 1935; R.C.M. 1947, 81-920.

77-2-327. Certificate of purchase. (1) Upon the approval of the sale and receipt of satisfactory evidence of settlement with the former lessee, if any, for improvements on the land, the department shall execute and mail to the purchaser a certificate of purchase signed by the governor as president of the board and by the director of the department and attested by the seal of the board. The certificate of purchase must contain the date of sale, the name and post-office address of the purchaser, a description of the land, the total purchase price, the amount paid on the day of sale, the balance unpaid, and the amount and due date of each installment of

principal and interest to the time of maturity. The certificate must reserve the easements for rights-of-way granted by the statutes in favor of the United States and other easements that have been granted by the board and must contain the reservations in favor of the state provided for in 77-2-304 relating to coal, oil, and mineral rights in the land.

(2) The certificate must also contain information regarding the lien of the state on crops and improvements on the land; installments of principal, interest, and taxes; and any additional conditions, agreements, and information that the board considers necessary in order to carry out the intent of this part.

History: En. Sec. 85, Ch. 60, L. 1927; re-en. Sec. 1805.85, R.C.M. 1935; amd. Sec. 62, Ch. 428, L. 1973; R.C.M. 1947, 81-921; amd. Sec. 2, Ch. 157, L. 1981; amd. Sec. 321, Ch. 418, L. 1995.

Cross-References

Easements to pass with land, 70-20-308.

Certificate for land within federal irrigation projects to state liability for share of reclamation charges, 77-2-305.

Approval of sale by Board required, 77-2-308.

77-2-328. Additional rules — deposit of fees. The board may prescribe any additional rules for the conduct of sales of state land as in its judgment the interests of the state may demand. The rules may not include a deduction of fees from land granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329. Any fees collected by a rule adopted pursuant to this section must be deposited in the trust land administration account as provided in 77-1-109.

History: En. Sec. 76, Ch. 60, L. 1927; re-en. Sec. 1805.76, R.C.M. 1935; R.C.M. 1947, 81-913; amd. Sec. 59, Ch. 422, L. 1997; amd. Sec. 9, Ch. 355, L. 2003; amd. Sec. 10, Ch. 247, L. 2007; amd. Sec. 19, Ch. 465, L. 2009.

Cross-References

Adoption of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

77-2-329. Terms of payment. (1) A purchaser of state land shall pay on the day of sale that portion of the purchase price that the purchaser desires, but not less than 10% of the total sales price. If the balance on the purchase price is not an exact multiple of $25, the purchaser shall pay the additional sum that is necessary to reduce the balance to an even multiple of $25.

(2) The purchaser shall pay the balance of the purchase price within 30 days. The department may extend this deadline up to 30 additional days for good cause.

History: En. Sec. 79, Ch. 60, L. 1927; re-en. Sec. 1805.79, R.C.M. 1935; amd. Sec. 1, Ch. 149, L. 1939; amd. Sec. 8, Ch. 257, L. 1965; amd. Sec. 10, Ch. 22, L. 1971; amd. Sec. 59, Ch. 428, L. 1973; amd. Sec. 1, Ch. 191, L. 1974; R.C.M. 1947, 81-915; amd. Sec. 1, Ch. 104, L. 1987; amd. Sec. 1, Ch. 488, L. 1991; amd. Sec. 2548, Ch. 56, L. 2009.

77-2-330. Computation of interest and payment schedule. The balance of the purchase price shall draw interest from the date on which the sale was confirmed and approved by the board, and all installments on principal and interest shall become due and payable on that date in each succeeding year until payment has been made in full.

History: En. Sec. 86, Ch. 60, L. 1927; re-en. Sec. 1805.86, R.C.M. 1935; R.C.M. 1947, 81-922.

77-2-331. Manner of making payments. (1) The department is not required to accept fractional payments of the installments on certificate of purchase on account of the complications arising from the division of payments.

(2) The purchaser may make payment of one or more installments before the same becomes due, but unless such payments are made at least 6 months before the installments become due, no reduction may be made in the interest payments. If installments on principal and interest are paid more than 6 months prior to the due date, the interest from the date of such payment shall be figured upon the balance of the principal unpaid after the advance payment has been made up to the date on which it comes due.

(3) If for any reason any installment is not paid when due, the total of that installment, including payment on the principal and payment on interest, shall draw penalty interest at the rate of 6% per annum from the date due until the date actually paid.

(4) Payment may be made in full at any time before maturity by paying the balance on the principal and interest accrued up to the date of such payment.

History: En. Sec. 87, Ch. 60, L. 1927; re-en. Sec. 1805.87, R.C.M. 1935; amd. Sec. 63, Ch. 428, L. 1973; R.C.M. 1947, 81-923.

77-2-332. Procedure in case of default. (1) If a purchaser or assignee of state land defaults for a period of 30 days or more in the payment of any of the installments due on the certificate of purchase, the certificate is subject to cancellation. The department shall mail to the purchaser at the purchaser's last-known post-office address a notice of default and pending cancellation. The notice must give the purchaser 60 additional days from the date of mailing the notice in which to make payment of the delinquent installment or installments with penalty interest.

(2) If the purchaser fails to make the payment within 60 days, the certificate of purchase from that date and without further notice is void, the duplicate of the certificate in the office of the department must be canceled, and the land under the certificate reverts to and becomes the property of the state to the same extent as other state lands and must be open to lease and sale.

(3) All buildings, fences, and other improvements placed on the land subsequent to the date of execution of the certificate of purchase must be and remain the property of the purchaser named in the certificate of purchase or of the purchaser's heirs, assigns, or devisees and may be removed from the land at any time within 90 days after the date of the cancellation. If the buildings, fences, and other improvements are not removed prior to the expiration of the 90-day period, they become the property of the state.

(4) In case of cancellation of certificate of purchase or surrender of certificate of purchase and when the land is again open to lease, the former lessee has the prior right to lease the tract at the existing rate or at the rate set by competitive bidding if bidding occurs.

History: En. Sec. 88, Ch. 60, L. 1927; re-en. Sec. 1805.88, R.C.M. 1935; amd. Sec. 4, Ch. 141, L. 1939; amd. Sec. 1, Ch. 159, L. 1951; amd. Sec. 64, Ch. 428, L. 1973; R.C.M. 1947, 81-924; amd. Sec. 2549, Ch. 56, L. 2009.

Cross-References

Land foreclosed by Board of Investments not state land, 77-1-101.
Court actions for money due on cancellation of certificates, 77-1-111.
Sale of land under execution, 77-2-315.
Subsequent purchaser may take subject to liens, 77-2-336.

77-2-333. Reinstatement of canceled certificates of purchase. (1) In all cases in which a certificate of purchase of state lands has been canceled and annulled as provided by law and the lands under the certificate have not been resold to another purchaser, the board may in its discretion reinstate the canceled certificate upon:

(a) proper application made in writing by the original purchaser or the original purchaser's heirs, assigns, or devisees, filed within 1 year and 6 months from the cancellation;

(b) payment of all delinquent installments of principal and interest on the certificate, together with penalty interest at the rate of 6% a year upon all delinquent installments from the date due until the date of actual payment; and

(c) the furnishing of proof from the county treasurer showing that there are no tax liens against the land.

(2) This reinstatement does not have the effect of canceling any lease that the state may have issued on the land or affecting any of the provisions of the lease.

History: En. Sec. 89, Ch. 60, L. 1927; amd. Sec. 1, Ch. 101, L. 1929; re-en. Sec. 1805.89, R.C.M. 1935; R.C.M. 1947, 81-925; amd. Sec. 2550, Ch. 56, L. 2009.

77-2-334. Assignment of certificate. Certificates of purchase may be assigned to a citizen of the United States or to a person who has declared an intention to become a citizen or to a corporation organized under the laws of this state. These assignments must be made on forms prescribed by the department, must be duly acknowledged as other conveyances of real estate, and must be executed in duplicate with one copy to be filed and retained in the office of the department and one copy to be retained by the assignee. A person is not qualified to receive an assignment if the lands that the person has already purchased from the state, together with the lands included in the assignment, exceed one section. The assignee must in all respects possess the same qualifications as an original purchaser.

History: En. Sec. 90, Ch. 60, L. 1927; re-en. Sec. 1805.90, R.C.M. 1935; amd. Sec. 65, Ch. 428, L. 1973; R.C.M. 1947, 81-926; amd. Sec. 2551, Ch. 56, L. 2009.

Cross-References

Certificate of purchase voidable for default, 77-2-332.
Subsequent purchaser may take subject to liens, 77-2-336.

77-2-335. Lost certificate. If a certificate of purchase to state land is lost or is wrongfully withheld by any person from the owner of the land, the rightful owner may apply to the board for the issuance of a substitute certificate. This application must be accompanied by an affidavit from the owner of the certificate setting forth the facts in regard to the loss or unlawful withholding of the certificate and by a certificate from the county clerk and recorder of the county in which the land is located showing all instruments of record in the clerk and recorder's office affecting the title to the land under the certificate. The board shall issue a substitute certificate of purchase to the applicant if in the judgment of the board the facts warrant its issue.

History: En. Sec. 91, Ch. 60, L. 1927; re-en. Sec. 1805.91, R.C.M. 1935; amd. Sec. 66, Ch. 428, L. 1973; R.C.M. 1947, 81-927; amd. Sec. 2552, Ch. 56, L. 2009.

77-2-336. Lien on improvements and crops for amount due state. (1) The state has a lien prior and superior to all other liens, except thresher's liens and seed liens as specified in 71-3-701 and 71-3-801, that have priority, but only for the aggregate amount of the indebtedness then existing, including any advances made, interest due, and other charges, as evidenced by the original loan contract and indebtedness accumulating on that basis, exclusive of any other future advances originally contemplated. This lien is upon all buildings, structures, fences, and other improvements upon the land sold and upon all crops growing upon any of the land and also upon crops after they have been separated from the land for all due and delinquent installments of principal and interest and penalty interest and taxes under the certificate of purchase and also for all installments becoming due during the calendar year in which the crop is harvested, and this lien is expressly reserved.

(2) Any person purchasing or otherwise acquiring the improvements or crops or any part of the improvements or crops takes them subject to the lien.

(3) Any representative of the department or the sheriff of the county in which the land is located or the sheriff's deputy may demand of the purchaser or the purchaser's agent payment of the amounts due the state, and if they are not paid upon demand, the officer making the demand or any representative of the department may immediately seize the improvements and crops and, upon giving 3 days' notice, sell and dispose of, either at private or public sale, sufficient of the crops or improvements or of both to pay the amounts due the state, together with cost and expenses of seizure and sale.

History: En. Sec. 81, Ch. 60, L. 1927; re-en. Sec. 1805.81, R.C.M. 1935; amd. Sec. 60, Ch. 428, L. 1973; R.C.M. 1947, 81-917; amd. Sec. 2553, Ch. 56, L. 2009.

Cross-References

Sale on execution of judgment, Title 25, ch. 13, part 7.
Liens — generally, Title 71, ch. 3, part 1.
Farm laborers' liens, 71-3-401.
Priority — construction liens, 71-3-541, 71-3-542.
Lien for hail insurance, 71-3-711.
Lien for spraying or dusting crops, 71-3-904.

77-2-337. Disposition of sale proceeds. (1) Except as provided in 77-2-362 and subsection (3) of this section, the proceeds from the state land sold, including all subsequent payments on the principal, must be credited to the permanent fund arising from the grant to which it belongs and must become and forever remain an inseparable and inviolable part of the permanent fund.

(2) All payments on interest must be credited to the proper income fund and must be available for use as provided by law.

(3) (a) Proceeds from the sale of any state trust land, as authorized by 77-2-361 through 77-2-367, must be deposited into the state land bank fund established in 77-2-362 to be used for the purposes described in 77-2-362 and 77-2-364 for the long-term financial benefit of the beneficiaries for whom the funds were deposited.

(b) If the proceeds from the sale of state trust land, as authorized by 77-2-361 through 77-2-367, are not used for the purposes described in 77-2-362 and 77-2-364, the proceeds from the sale and any earnings on the proceeds must be deposited pursuant to subsection (1) of this section.

History: En. Sec. 75, Ch. 60, L. 1927; amd. Sec. 1, Ch. 177, L. 1933; re-en. Sec. 1805.75, R.C.M. 1935; amd. Sec. 5, Ch. 184, L. 1961; amd. Sec. 58, Ch. 428, L. 1973; R.C.M. 1947, 81-912(4); amd. Sec. 10, Ch. 355, L. 2003.

Cross-References

Public school fund — revenue, Art. X, sec. 2 and 5, Mont. Const.
Trust and agency fund types, 17-2-102.

Interest and income money, 20-9-341.
Permanent fund type — public school fund, 20-9-601.
Land foreclosed by Board of Investments not state land, 77-1-101.
Board subject to authority of Board of Investments, 77-1-202.
Portion of income to go to development of state lands, Title 77, ch. 1, part 6.

77-2-338 through 77-2-340 reserved.

77-2-341. Patents. When the purchase price has been paid in full together with interest according to the certificate, the owner thereof shall be entitled to receive a patent for the land under such certificate.

History: En. Sec. 95, Ch. 60, L. 1927; re-en. Sec. 1805.95, R.C.M. 1935; R.C.M. 1947, 81-931.

77-2-342. Execution of patents. (1) The governor and, in the governor's absence or inability, the lieutenant governor shall execute deeds or patents of conveyance transferring without covenants any lands sold by the board under the laws of this state when full payment has been made for the land.

(2) The deed or patent must be attested by the secretary of state, must be countersigned by the director of the department, and must have the great seal of the state and the seal of the board attached to the deed or patent but need not be acknowledged.

History: En. Sec. 96, Ch. 60, L. 1927; re-en. Sec. 1805.96, R.C.M. 1935; amd. Sec. 69, Ch. 428, L. 1973; R.C.M. 1947, 81-932(part); amd. Sec. 322, Ch. 418, L. 1995.

Cross-References

Governor executing patents, 2-15-201.
Execution of deeds, 17-6-201(6).

77-2-343. Patent provisions. (1) Such deed or patent shall contain the reservation of easements for rights-of-way to the United States, reservation of all minerals in the land as provided in 77-2-304, and all other reservations to which the particular land conveyed is subject.

(2) If the land is located within the boundaries of a federal irrigation project, the patent shall contain a lien clause substantially in the following form: The land hereby conveyed is located within the boundaries of a federal irrigation project and is subject to all liens which the United States may have thereon by reason of its being located under such irrigation project.

(3) This section does not require any reservation in a patent which was not an express or implied reservation in the certificate of purchase pursuant to which the patent is issued. The statutes in effect when such certificate of purchase was issued must govern.

History: En. Sec. 96, Ch. 60, L. 1927; re-en. Sec. 1805.96, R.C.M. 1935; amd. Sec. 69, Ch. 428, L. 1973; R.C.M. 1947, 81-932(part); amd. Sec. 3, Ch. 157, L. 1981.

Cross-References

Irrigation districts — liens and charges, 77-2-315.

77-2-344. Copy of deed or patent as evidence. A certified copy of the record of any such deed or patent shall be received in evidence in all courts of record of this state the same as the original.

History: En. Sec. 96, Ch. 60, L. 1927; re-en. Sec. 1805.96, R.C.M. 1935; amd. Sec. 69, Ch. 428, L. 1973; R.C.M. 1947, 81-932(part).

77-2-345. Limitation for cancellation of patent. No action shall be brought to vacate or cancel any patent issued by the state after the expiration of 2 years from the date of such patent except upon the ground of fraud.

History: En. Sec. 97, Ch. 60, L. 1927; re-en. Sec. 1805.97, R.C.M. 1935; R.C.M. 1947, 81-933.

Cross-References

Fraud — actual and constructive, 28-2-404 through 28-2-406.

77-2-346 through 77-2-350 reserved.

77-2-351. Sale to or exchange of property with public entity. Notwithstanding any other section in this chapter, any lands may be sold to or exchanged for other land or for other consideration with another public entity on terms and in a manner that the board, after consultation with the appropriate legislative committee, may determine to be in the state's best interest, subject to The Enabling Act and constitutional restrictions. In the case of land that is not granted to or held by the state in trust for the support of the common schools, for a state institution, or for another specific purpose, the board may accept as partial or total consideration for the transfer of the land a binding commitment by the transferee to use the

property to provide a community service or a benefit that fulfills a public purpose. The sale or exchange of the property may not be finally concluded until 60 days' public notice of the terms of the proposed sale or exchange has been given. As used in this section, "public entity" means any county, city, municipal corporation, school district, regional water authority provided for in Title 75, chapter 6, part 3, or special improvement or taxing district.

History: En. Sec. 1, Ch. 264, L. 1991; amd. Sec. 1, Ch. 272, L. 1995; amd. Sec. 2, Ch. 141, L. 2011.

77-2-352 through 77-2-360 reserved.

77-2-361. Definitions. As used in 77-2-361 through 77-2-367, the following definitions apply:

(1) "Isolated parcel" means any state land not possessing a legal right of access by the public.

(2) "Land banking" means a process of selling various parcels of state land and using the proceeds from the sales to purchase other land, easements, or improvements that are likely to provide greater or equal trust revenue, as may be reasonably expected over a 20-year accounting period with an acceptable level of risk, for the affected trust and to diversify the land holdings of the various trusts.

History: En. Sec. 11, Ch. 355, L. 2003.

77-2-362. State land bank fund — statutory appropriation — rules. (1) There is a state land bank fund. The proceeds from the sale of state trust land authorized by 77-2-361 through 77-2-367 must be deposited into the state land bank fund. The purpose of the state land bank fund is to temporarily hold proceeds from the sale of trust land pending the purchase of other land, easements, or improvements for the benefit of the beneficiaries of the respective trusts. A separate record of the proceeds received from the sale of trust land for each of the respective trusts must be maintained. Proceeds from the sale of lands that are part of a trust land grant may be used only to purchase land for the same trust.

(2) (a) Proceeds deposited in the state land bank fund, except earnings on those proceeds, are statutorily appropriated, as provided in 17-7-502, to the department for the purposes described in 77-2-361 through 77-2-367. All earnings on the proceeds deposited in the state land bank fund are subject to the provisions of Article X, sections 5 and 10, of the Montana constitution.

(b) Funds appropriated from the trust land administration account provided for in 77-1-108 may be used by the department to fund the transactional costs of buying, selling, appraising, or marketing real property. Transactional costs may include realtor's fees, title reports, title insurance, legal fees, and other costs that may be necessary to complete a conveyance of real property.

(c) Proceeds from the sale of lands held pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329, may not be used for any transactional costs or trust administration purposes for those lands.

(d) The department may hold proceeds from the sale of state land in the state land bank fund for a period not to exceed 10 years after the effective date of each sale. If, by the end of the 10th year, the proceeds from the subject land sale have not been encumbered to purchase other lands, easements, or improvements within the state, the proceeds from that sale must be deposited in the public school fund or in the permanent fund of the respective trust as required by law, along with any earnings on the proceeds from the land sale, unless the time period is extended by the legislature.

(3) The board shall adopt rules providing for the implementation and administration of the state land bank fund, purchases, and sales.

History: En. Sec. 12, Ch. 355, L. 2003; amd. Sec. 115, Ch. 2, L. 2009; amd. Sec. 20, Ch. 465, L. 2009.

77-2-363. Land banking land sales and limitations — sale preparation costs. (1) (a) The board may not cumulatively sell or dispose of more than 250,000 acres of state land. Seventy-five percent of the acreage cumulatively sold must be isolated parcels that do not have a legal right of access by the public. At any one time during the life of the land banking process, the board may not sell more than 20,000 acres of state land unless the board has acted to use the revenue from that land to make purchases pursuant to 77-2-364.

(b) The estimated fair market value must be determined by a Montana-licensed and Montana-certified appraiser.

(2) (a) A person bidding to purchase state land offered for sale shall 20 days prior to the day of auction deposit with the department a bid bond in the form of a certified check or cashier's check drawn on any Montana bank or an electronic funds transfer, as defined in 32-6-103, equal to at least 20% of the minimum sale price specified by the department pursuant to 77-2-323(1) to guarantee the bidder's payment of the purchase price. Bid bonds submitted to secure a bid on a parcel formerly leased as a cabin or home site need only be equal to 5% of the minimum sale price as specified by the department.

(b) Except as provided in subsection (2)(c), if the current lessee of the land to be sold has initiated the sale as authorized by 77-2-364, the lessee may cancel the sale by giving notice to the department at least 10 days prior to the day of the auction. When the sale is canceled by the lessee, the lessee shall pay the costs incurred by the department for the preparation of the sale, including any costs incurred for preparation of documents required by 75-1-201.

(c) If the land to be sold is a leased cabin or home site as provided in 77-2-318 and the current lessee has initiated the sale as authorized by 77-2-364, the lessee may cancel the sale by giving notice to the department at least 10 days prior to the day of the auction unless another person has deposited a bid bond per subsection (2)(a), at which point the sale cannot be canceled by the lessee. When the sale is canceled by the lessee, the lessee shall pay the costs incurred by the department for the preparation of the sale, including any costs incurred for preparation of documents required by 75-1-201.

(d) The department shall retain the bid bond of the successful bidder and shall return the bid bonds of the unsuccessful bidders. If the successful bidder fails to comply with the terms of the sale for any reason, the successful bidder's bid bond must be forfeited and credited to the interest and income account of the proper trust.

(3) Except for a sale that is initiated by the lessee of the parcel of land proposed for sale, prior to the proposed sale of any parcel of state land under the land banking process, the board shall give 60 days' notice of the proposed sale to the lessee of the parcel to allow the lessee sufficient time to determine whether the lessee wishes to propose an exchange of the land to the board.

(4) For a sale initiated by the board, the department, or the cabin or home site lessee, the lessee of the land must be afforded all the rights and privileges to match the high bid as provided in 77-2-324.

(5) (a) Except as provided in subsection (6), when the lessee has initiated a sale of land under this section, the lessee shall remit to the department the estimated costs of preparing the parcel for sale, including but not limited to appraisals, cultural surveys, environmental review pursuant to Title 75, chapter 1, parts 1 through 3, and land surveys, if necessary. Payment must be made within 10 days after the board has provided preliminary approval for the sale of the parcel.

(b) If the parcel is sold to the lessee, the funds remitted for the costs of the sale must be applied to the actual costs at closing. If the parcel is sold to a party other than the lessee, the funds remitted by the lessee must be refunded to the lessee and the actual costs of preparing the parcel for sale must be assessed to the purchaser at closing.

(6) For the sale of a cabin or home site, the department shall prepare and assume the cost of the land survey. The department may allow the survey to be paid for in advance by the lessee or the owner of any improvements if the survey is contracted through the department according to department specifications. If the parcel is sold but the purchaser is other than the lessee or the owner of the improvements, the cost of the survey must be included in the actual costs at closing and the department shall refund the cost of the survey to the former lessee or the owner of the improvements.

(7) The sale of a cabin or home site is exempt from the provisions of Title 75, chapter 1, parts 1 through 3.

History: En. Sec. 13, Ch. 355, L. 2003; amd. Sec. 1, Ch. 396, L. 2007; amd. Sec. 2, Ch. 456, L. 2007; amd. Sec. 1, Ch. 209, L. 2009; amd. Sec. 4, Ch. 422, L. 2013; amd. Sec. 2, Ch. 193, L. 2015; amd. Sec. 3, Ch. 268, L. 2015; amd. Sec. 1, Ch. 226, L. 2023.

77-2-364. Land banking purchases. (1) The board may select and purchase, lease, receive by donation, hold in trust, or in any manner acquire for and in the name of the state of Montana, in trust for the beneficiaries specified in sections 10 through 19 of The Enabling Act of Congress (approved February 22, 1889, 25 Stat. 676), as amended, any interest in real property and improvements, tracts, and leaseholds of land that the board considers proper in order to best provide prudent, maximum, long-term revenue for the beneficiaries.

(2) Sales of state land may be initiated only by the board, by the department, or at the request of a lessee, pursuant to 77-1-202, 77-1-301, 77-2-301, or 77-2-308. The board shall ensure that the full market value of the land sold is realized for each trust by using the appraisal, sale, advertising, and competitive bid procedures contained within 77-2-303, 77-2-321, 77-2-322, 77-2-323, and 77-2-324. The estimated fair market value must be determined by a Montana-licensed and Montana-certified appraiser.

(3) When it is not inconsistent with the purpose of the trust, the board shall purchase land possessing legal access for all legal purposes.

(4) When purchasing land, easements, or improvements for the existing trusts, the board shall develop and apply appraisal and revenue projection procedures to ensure that the land or easements proposed for purchase or that the improvements proposed to be acquired are likely to produce more net revenue for the affected trust than the revenue that was produced from the land that was sold. The board may not purchase land, easements, or improvements pursuant to 77-2-361 through 77-2-367 unless it has first prudently determined that the land, easements, or improvements are likely to produce a greater or equal annual rate of return, as may be reasonably expected over a 20-year accounting period for Class 1, 3, and 4 lands and over a 60-year accounting period for Class 2 lands, as described in 77-1-401, with an acceptable level of risk for the affected trust, than the current annual rate of return from the state land that has been sold pursuant to 77-2-363. As guidance, the board shall use generally accepted accounting standards and the Uniform Appraisal Standards for Federal Land Acquisitions published by the U.S. department of justice and the appraisal institute.

(5) Prior to purchasing any land, easements, or improvements, the board shall determine that the financial risks and benefits of the purchase are prudent, financially productive investments that are consistent with the board's fiduciary duty as a reasonably prudent trustee of a perpetual trust. For the purposes of implementing 77-2-361 through 77-2-367, that duty requires the board to:

(a) discharge its duties with the care, skill, prudence, and diligence that a prudent person acting in a similar capacity with the same resources and familiar with similar matters should exercise in the conduct of an enterprise of similar character and aims;

(b) diversify the land holdings of each trust to minimize the risk of loss and maximize the sustained rate of return;

(c) discharge its duties and powers solely in the interest of and for the benefit of the trust managed;

(d) discharge its duties subject to the fiduciary standards set forth in 72-38-801; and

(e) maintain, as closely as possible, the existing land base of each trust, consistent with the state's fiduciary duty.

(6) Prior to purchasing a parcel of land in excess of 160 acres in any particular county, the board shall consult with the county commissioners of the county in which the parcel is located.

History: En. Sec. 14, Ch. 355, L. 2003; amd. Sec. 2, Ch. 396, L. 2007; amd. Sec. 3, Ch. 456, L. 2007; amd. Sec. 158, Ch. 264, L. 2013.

77-2-365. Right of access not created. Nothing in 77-2-361 through 77-2-367 creates any express or implied right of access, right-of-way, or easement for the benefit of the board, the department, or any purchaser of state land over or through any other property.

History: En. Sec. 15, Ch. 355, L. 2003.

77-2-366. Repealed. Sec. 14, Ch. 460, L. 2025.

History: En. Sec. 16, Ch. 355, L. 2003; amd. Sec. 3, Ch. 396, L. 2007; amd. Sec. 2, Ch. 209, L. 2009; amd. Sec. 5, Ch. 422, L. 2013; amd. Sec. 108, Ch. 261, L. 2021.

77-2-367. Road easements on state lands. County roads or easements for county roads on lands purchased from the state of Montana are subject to the provisions of Title 7, chapter 14, part 26, regarding the establishment, alteration, or abandonment of county roads.

History: En. Sec. 17, Ch. 355, L. 2003.

Part 4
Transfer of Federal Land or Easements

77-2-401. Sale or transfer of federal land — when hearing required. (1) Prior to the sale or transfer of land in the state that is owned or controlled by an agency of the United States government, the director of the department shall determine whether there would be any impact on the management of state lands, on agricultural, wildlife, or recreational resources of the state, or on the cost of government services provided by the state, by any school district, or by any county, city, or other local government unit because of the sale or transfer.

(2) If the director determines under subsection (1) that there would be an adverse impact and that a hearing or public meeting has not been or will not be conducted by a federal agency to provide an opportunity for expression of public opinion regarding the proposed sale or transfer and that further public input would be desirable, the director shall hold a public hearing prior to the sale or transfer in order to provide the opportunity for the expression of public sentiment regarding the proposed disposition of federal land.

(3) If a hearing will be conducted by a federal agency on the proposed sale or transfer of federal land within the state, the director shall require the attendance of a representative of the department for the purposes of fulfilling the requirements of 77-2-403.

(4) The sale or transfer of easements by an agency of the United States government and the transfer of land by the United States to the state of Montana in satisfaction of land owed to the state pursuant to The Enabling Act are exempt from the operation of this section.

History: En. Sec. 1, Ch. 670, L. 1983; amd. Sec. 323, Ch. 418, L. 1995.

77-2-402. Hearing requirements. Any hearing required under 77-2-401 must be held in a county in which the land involved in the proposed sale or transfer is located and must be held according to procedural rules that must be adopted by the director of the department in accordance with the Montana Administrative Procedure Act.

History: En. Sec. 2, Ch. 670, L. 1983; amd. Sec. 285, Ch. 42, L. 1997.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

77-2-403. Action by director. The director of the department shall take action that the director considers appropriate, consistent with federal jurisdiction, to address concerns and issues raised during the hearing. The action may include but is not limited to:

(1) the filing of formal requests for action by the appropriate federal agency that would alleviate concerns expressed at the hearing;

(2) the filing of a formal protest to the proposed sale or transfer.

History: En. Sec. 3, Ch. 670, L. 1983; amd. Sec. 286, Ch. 42, L. 1997.

CHAPTER 3
ROCK, MINERAL, COAL, OIL, AND GAS RESOURCES

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Part 1
Prospecting Permits and Mining Leases

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Duty to notify weed management district when proposed project will disturb land, 7-22-2152.
Minerals, Oil, and Gas, Title 82.
Reclamation and Development Grants Program Act, Title 90, ch. 2, part 11.

77-3-101. Definitions. In this part the following definitions apply:

(1) "Full market value" means the highest net value of products of mining operations in United States markets, less cost of transportation and refining, not including as a deduction any cost of producing or treating at the mine.

(2) "Gems" means sapphires, rubies, and other stones commonly known as "precious stones" or "semiprecious stones", but does not mean stones or other earth materials commonly used in building or construction work.

(3) "Metalliferous minerals" means gold, silver, lead, zinc, copper, platinum, iron, and all other metallic minerals.

(4) "Mining" means the carrying on of operations of any kind for the purpose of extracting from the earth ore and other earth material containing metalliferous minerals or gems and includes operations of any kind for the extraction from ores and other earth material of metalliferous minerals or gems.

(5) "Mining lease" means a lease issued by the board for the prospecting for or mining of metalliferous minerals or gems.

(6) "Mining lessee" means the holder of a mining lease whether the holder is the original lessee under the lease or holds the lease as successor of the original lessee.

(7) "Returns" means the net amount received by the shipper from products of mining operations after deducting transportation costs, smelting charges and deductions, and other treatment costs, not including as a deduction any cost of producing or treating at the mine.

History: En. Sec. 1, Ch. 148, L. 1937; amd. Sec. 35, Ch. 428, L. 1973; R.C.M. 1947, 81-601.

77-3-102. Mining leases authorized — term of leases — definitions. (1) The board may, in its discretion and subject to the other provisions of this part, lease state lands, including the beds of navigable streams and the beds of navigable bodies of water and the reserved mineral rights of the state in lands sold or leased by the state, to any person, association, or corporation for the purpose of prospecting for or mining metalliferous minerals or gems.

(2) (a) Subject to subsections (2)(b) and (2)(c), mining leases must be issued for:

(i) a primary term of not less than 10 years and to be held by production for as long thereafter as metalliferous minerals or gems are produced in commercial quantities; or

(ii) if the lands are subject to limitations contained in grants by which the state acquired title to the lands or mineral rights to be leased, a period determined by the board to be in accordance with the limitations.

(b) If a lease issued under this part, a corresponding permit issued pursuant to Title 82, chapter 4, or a proposed evaluation under Title 75 is enjoined or ineffective due to a temporary restraining order, preliminary injunction, or other equitable relief, or if its issuance is postponed by a challenge requiring further agency review, then the primary term of the lease described in subsection (2)(a) must be commensurately extended for the period that the lease, permit, or action is enjoined or ineffective.

(c) If a lease is issued under this part and an exploration license provided for in 82-4-332 is obtained on the leased land, the lease must be extended commensurately with the period for which the exploration license is authorized and for which exploration is occurring on the leased land.

(3) As long as a lessee complies with the terms and conditions of a lease, the lease may not be terminated at the end of the primary term of the lease described in subsection (2)(a) if the lands are covered and described by a mining permit issued under Title 82, chapter 4, or are described in a mine-site location permit under Title 82, chapter 4.

(4) Leases issued under this part must give the lessee, as long as the lessee complies with the terms and conditions of the lease, the exclusive right of possession of the lands or mineral rights leased, subject to any reservations contained in the leases.

(5) In making the leases, the board may exercise business discretion as long as this part is not violated.

(6) As used in this section, the following definitions apply:

(a) "Commercial quantities" means a quantity of metalliferous minerals or gems that can be sold at a profit.

(b) "Covered and described" or "described" means, under a mine permit or a mine-site location permit, that the leased lands or a portion of the leased lands within or outside the boundaries of the permit area are expected to be affected or disturbed at some point during the term of the permittee's exploration activities or surface mining or underground mining operations and are identified in the permittee's license or permit application.

History: (1), (2)En. Sec. 2, Ch. 148, L. 1937; amd. Sec. 36, Ch. 428, L. 1973; Sec. 81-602, R.C.M. 1947; (3),(4) En. Sec. 3, Ch. 148, L. 1937; amd. Sec. 1, Ch. 205, L. 1947; amd. Sec. 37, Ch. 428, L. 1973; Sec. 81-603, R.C.M. 1947; R.C.M. 1947, 81-602, 81-603(part); amd. Sec. 2554, Ch. 56, L. 2009; amd. Sec. 1, Ch. 617, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 617, L. 2025. Amendment effective May 13, 2025.

Cross-References

Authority to lease, Art. X, sec. 4, Mont. Const.; 77-1-204.

Leases for production of minerals for term of years as provided by Legislature, The Enabling Act, sec. 11 (see anno. vol. 1).

Eminent domain — available when surface rights in others, except for strip or open-pit mining, 70-30-102.

Powers and duties of Board, 77-1-202.

Purchaser of state land takes subject to state mineral rights, 77-2-304.

Sales, contracts for sale, and other leases subject to mining leases, 77-3-122.

Leasing preference to prospecting permittee, 77-3-132.

Release of record upon forfeiture of lease — penalty, 82-1-201.

Uranium mining permit required, 82-4-221.

Mine operating permit required, 82-4-335.

77-3-103. Prospecting permits authorized. Prospecting permits without lease may be issued by the board upon the payment of the issuance fee under 77-1-302. The permittee shall also pay an annual fee established by the department and approved by the board at the end of

each year during the life of the permit. A permit shall provide for due diligence in the work of prospecting during the life of the permit.

History: En. Sec. 15, Ch. 148, L. 1937; amd. Sec. 9, Ch. 22, L. 1971; Sec. 81-615, R.C.M. 1947; redes. 81-601.1 and amd. by Sec. 47, Ch. 428, L. 1973; R.C.M. 1947, 81-601.1(part).

Cross-References

Geophysical exploration — permits required, 82-1-101.
Exploration license required, 82-4-331.

77-3-104. Notice of permit or lease approval. Upon the approval of an application for a prospecting permit or a mining lease under this part, the department shall promptly give written notice, by ordinary mail, to the permittee or lessee and to any holder of an agricultural or grazing lease embracing the same land or to any holder of a certificate of purchase or patent embracing the same land. The notice must be addressed to the permittee, mining lessee, agricultural or grazing lessee, purchaser, or patentee at the person's last-known post-office address.

History: En. Sec. 16, Ch. 148, L. 1937; amd. Sec. 48, Ch. 428, L. 1973; R.C.M. 1947, 81-616; amd. Sec. 2555, Ch. 56, L. 2009.

77-3-105. Assignment of leases or permits. In case of the assignment of a mining lease or a prospecting permit by the holder thereof, the mining lessee or permittee executing the assignment is not relieved of any responsibility for operations under the lease or prospecting permit until:

(1) the financial and moral responsibility of the assignee has been approved by the board; and

(2) there is deposited with the department:

(a) the assignment or an executed copy thereof;

(b) an instrument executed by the sureties upon any bonds then held by the board in connection with the mining lease or permit and then in force, consenting to the assignment and containing the agreement of the sureties to be bound by the bonds under the assignment or new bonds conforming to all the requirements of 77-3-119; and

(c) a fee prescribed under 77-1-302.

History: En. Sec. 13, Ch. 148, L. 1937; amd. Sec. 8, Ch. 22, L. 1971; amd. Sec. 45, Ch. 428, L. 1973; R.C.M. 1947, 81-613.

77-3-106. Disposition of royalties, fees, and penalties. All fees and penalties collected under this part shall be credited to the state general fund; all rentals shall be credited to the income fund of the grant to which the land belongs; and all moneys collected as royalties shall be credited to the permanent fund arising from the grant to which the land belongs under each particular permit or lease; provided, however, that all rentals and royalties received from "mortgage lands" shall be credited to the same fund or funds as other receipts from such lands and that all rentals and royalties received under or in connection with a lease or permit on other lands or mineral rights not acquired through any grant to the state of Montana from the United States shall be paid into the same funds into which such receipts are paid when the land is part of the grant for the benefit of the public schools of the state of Montana.

History: En. Sec. 17, Ch. 148, L. 1937; R.C.M. 1947, 81-617.

Cross-References

Public school fund — revenue, Art. X, sec. 2 and 5, Mont. Const.; 20-9-601.
Trust and agency fund types, 17-2-102.
Interest and income money, 20-9-341.
Portion of income to go to development of state lands, Title 77, ch. 1, part 6.

77-3-107 through 77-3-110 reserved.

77-3-111. Applications for mining lease. Application for a mining lease shall be made to the department on a form prescribed by it.

History: En. Sec. 6, Ch. 148, L. 1937; amd. Sec. 7, Ch. 22, L. 1971; amd. Sec. 40, Ch. 428, L. 1973; R.C.M. 1947, 81-606.

77-3-112. Examination of lands prior to leasing. (1) Before the board leases any lands for the mining of metalliferous metals or gems, the department shall investigate the character of the lands and the nature and possible extent of the mineral deposits therein for the purpose of determining whether those lands are of such a character as to warrant the issuance of a mining

lease thereon and for the purpose of determining the amount of royalty and other rentals or considerations for which the lands should be leased for mining purposes under this part.

(2) Upon the filing of an application for a mining lease the board may, if the lands covered by the application have not been examined by the department, require the applicant for the lease to deposit with the department an amount of money, not exceeding $500 in any one case, which in its judgment will cover the cost of a special examination to enable the board to pass upon the application in accordance with this part. Such deposit shall be used to reimburse the state for the actual cost of the examination, and any portion of the deposit not required for such reimbursement shall, upon the approval or rejection of the application, be repaid to the applicant by the department.

(3) The department shall make and preserve complete records of all such examinations.

History: En. Sec. 11, Ch. 148, L. 1937; amd. Sec. 43, Ch. 428, L. 1973; R.C.M. 1947, 81-611.

77-3-113. Quantity of lands covered by lease. A mining lease shall cover the quantity of ground the board determines to be reasonable and consistent with the character of the ground, the type of deposit or deposits for which the lands are to be mined, and the character and size of the operation contemplated, necessary, or reasonable in good mining practice for the profitable recovery of the metalliferous minerals or gems therefrom.

History: En. Sec. 5, Ch. 148, L. 1937; amd. Sec. 39, Ch. 428, L. 1973; R.C.M. 1947, 81-605.

77-3-114. Restrictions on mining leases on lands already subject to coal, oil, or gas lease. In the case of lands covered by a lease for the mining of coal, oil, or gas, no lease for the mining upon any such land for metalliferous minerals and/or gems shall be issued to any person, association of persons, or corporation, other than the holder of such coal, oil, or gas lease while such coal, oil, or gas lease is in force, except with the written consent of the holder of such coal, oil, or gas lease.

History: En. Sec. 10, Ch. 148, L. 1937; R.C.M. 1947, 81-610.

77-3-115. Lease provisions. (1) A lease may contain reasonable provisions for preliminary prospecting periods and must contain reasonable requirements for the prosecution of work during the prospecting period, if any, and for the prosecution of mining after the prospecting period.

(2) The lease may provide for the payment of rentals in conjunction with the work requirements or may prescribe cash rentals as an alternative or otherwise as the board considers best.

(3) The lease must specify the term of the lease, the royalty to be paid, reasonable forfeiture provisions, and reasonable terms under which the lessee may, within a time limited in the lease, remove property placed upon the leased lands by the lessee in the event of the termination of the lease by forfeiture or by lapse of time.

(4) The lease may contain other provisions that the board and the lessee agree upon that are not inconsistent with this part.

History: En. Sec. 3, Ch. 148, L. 1937; amd. Sec. 1, Ch. 205, L. 1947; amd. Sec. 37, Ch. 428, L. 1973; R.C.M. 1947, 81-603(part); amd. Sec. 2556, Ch. 56, L. 2009.

77-3-116. Royalty provisions. In every mining lease the board shall reserve to the state a royalty which shall, together with other considerations to be paid by the mining lessee, constitute the full market value as ascertained by the board of the leasehold interest conveyed by the lease. This royalty may not be less than 5% of the returns from or of the full market value of the metalliferous minerals or gems recovered by the lessee from the state lands or reserved mineral rights covered by the lease.

History: En. Sec. 4, Ch. 148, L. 1937; amd. Sec. 2, Ch. 205, L. 1947; amd. Sec. 38, Ch. 428, L. 1973; R.C.M. 1947, 81-604(1).

Cross-References

Full market value required, Art. X, sec. 11, Mont. Const.
Royalty in pooling agreements, 77-3-121.

77-3-117. Modification of lease provisions. The board, by agreement with the permittee or lessee, may, in its discretion and upon such terms as it considers best, amend or modify the terms and conditions within the limitations of this part or extend the term of any lease or prospecting permit issued under this part, subject to the limitations contained in 77-3-102.

History: En. Sec. 3, Ch. 148, L. 1937; amd. Sec. 1, Ch. 205, L. 1947; amd. Sec. 37, Ch. 428, L. 1973; R.C.M. 1947, 81-603(part); amd. Sec. 2, Ch. 617, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 617, L. 2025. Amendment effective May 13, 2025.

77-3-118. Restrictions on removal of minerals and gems during preliminary prospecting period. No mining lessee may, during any preliminary prospecting period contained in any lease, remove any metalliferous minerals or gems from the leased premises, except as are necessary for the proper testing and sampling of the lands or mineral rights, and except as are permitted by the board.

History: En. Sec. 3, Ch. 148, L. 1937; amd. Sec. 1, Ch. 205, L. 1947; amd. Sec. 37, Ch. 428, L. 1973; R.C.M. 1947, 81-603(part).

77-3-119. Bonds to state. The board may, at the time of the execution and delivery of a mining lease or at any time during the life of the lease, require a mining lessee to file with the department, for the benefit of the state, a bond or bonds conditioned to protect the rights of the state, particularly in the payment to the proper officer of the state of the royalties reserved in the mining lease. The bond or bonds shall be in a form and amount prescribed by the board. The board may at any time require new or additional bonds if in its discretion the interests of the state are not adequately protected by the bond or bonds previously filed.

History: En. Sec. 7, Ch. 148, L. 1937; amd. Sec. 41, Ch. 428, L. 1973; R.C.M. 1947, 81-607.

Cross-References

Bonds — who may issue — sureties, 33-26-101.

77-3-120. Bonds to protect prior purchasers, lessees, or contractees. (1) If the lands at the time of the issuance of a mining lease have been sold, are under contract of sale, or have been leased for agricultural, grazing, or other purposes, the board shall provide against the infringement of the rights of the prior purchaser, contractee, or lessee and among other things may at any time require the mining lessee to file with the department a corporate surety bond in a reasonable amount fixed by the board, conditioned to protect the rights of the prior purchaser, contractee, or lessee.

(2) The form of the bond shall be prescribed by the board, and the bond shall run to the state for the benefit of the prior purchaser, contractee, or lessee. New or additional bonds may be required by the board at any time.

(3) Suit may be brought upon the bond by any such prior purchaser, contractee, or lessee for alleged violation of the terms of the bond by the mining lessee. Such suit shall be brought by the claimant in the name of the state for the use and benefit of the claimant, and any recovery upon the bond shall be paid to the claimant.

History: En. Sec. 8, Ch. 148, L. 1937; amd. Sec. 42, Ch. 428, L. 1973; R.C.M. 1947, 81-608.

Cross-References

Guaranty, indemnity, and suretyship — generally, Title 28, ch. 11.
Surety — corporate bonds — who may issue, 33-26-101.

77-3-121. Pooling agreements and unit plans of operation. (1) The board may enter into agreements for the pooling of acreage or yardage with others holding the mineral rights in adjoining lands for unit operation of placer mining and the apportionment of royalties on a cubic yardage or area basis in the case of placer mining deposits lying partly on land in which the state holds the mining rights and partly on land in which others hold the mining rights.

(2) From each cleanup of values under such unit operations in which any yardage or area mined on lands to which the state holds the mineral rights is included, the state is entitled to royalties computed on that proportion of the whole value of recoveries from the cleanup as the yardage or area mined from lands included in the agreement in which the state holds the mining rights bears to the total yardage or area mined and included in the cleanup.

(3) The board may also enter into agreements for the unit operation of such placer mining deposits and the apportionment of royalties upon any other equitable basis the board considers in the best interest of the state. The agreements may not change the percentage of royalties to be paid to the state under the unit operations from the percentage fixed in the lease or to a smaller percentage than the 5% minimum under 77-3-116.

History: En. Sec. 4, Ch. 148, L. 1937; amd. Sec. 2, Ch. 205, L. 1947; amd. Sec. 38, Ch. 428, L. 1973; R.C.M. 1947, 81-604(2).

77-3-122. Sales, contracts for sale, and other leases subject to mining leases. Any sale of state lands, any contract for the sale of state lands, and any lease of state lands made or issued by said board during the life of any mining lease issued under the provisions of this part shall be subject to such mining lease during the life thereof, and no bond shall be required of such mining lessee for the protection of any such purchaser, contractee, or other lessee unless provision therefor shall be made in such mining lease.

History: En. Sec. 9, Ch. 148, L. 1937; R.C.M. 1947, 81-609.

77-3-123. Failure of title. In issuing mining leases, the board and the state have leased only such right, title, and interest as the state has in the lands, metalliferous minerals, or gems therein contained. Neither the state, the board, nor any representative, agent, or employee of the state or the board are under any liability for the failure of the title of the state, in whole or in part, to the lands, metalliferous minerals, or gems covered by the lease.

History: En. Sec. 12, Ch. 148, L. 1937; amd. Sec. 44, Ch. 428, L. 1973; R.C.M. 1947, 81-612.

77-3-124 through 77-3-129 reserved.

77-3-130. Limitation on public inspection rights. The department shall withhold from public inspection any information obtained from a mining lessee or permittee under this part if the information relates to proprietary geological information. The withholding is effective for as long as the department considers necessary, but in no event may be less than 5 years after expiration of the lease or permit, to protect the mining lessee's or permittee's economic interest in the proprietary geologic information against unwarranted injury or to protect the public's best interest.

History: En. Sec. 1, Ch. 105, L. 1989; amd. Sec. 3, Ch. 617, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 617, L. 2025. Amendment effective May 13, 2025.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Right of privacy, Art. II, sec. 10, Mont. Const.

77-3-131. Limitations on prospecting permits. A permit shall be limited to prospecting for metalliferous minerals or gems and no permittee may remove from any lands or mineral rights covered by the permit any metalliferous minerals or gems except such as are necessary for the proper testing and sampling of the lands or mineral rights and except as are permitted by the board.

History: En. Sec. 15, Ch. 148, L. 1937; amd. Sec. 9, Ch. 22, L. 1971; Sec. 81-615, R.C.M. 1947; redes. 81-601.1 and amd. by Sec. 47, Ch. 428, L. 1973; R.C.M. 1947, 81-601.1(part).

77-3-132. Leasing privileges of permittee. (1) During the life of any permit the permittee may apply for a lease of the lands or mineral rights covered by the permit, and if a lease is granted it must be in the form and subject to all the terms and conditions specified in this part, as in the case of a mining lease issued under this part.

(2) If some other person makes a better bid for a mining lease upon the land covered by the permit and if the board awards a mining lease to a better bidder, the board shall also require the mining lessee to pay to the permittee, prior to the issuance of the lease, the full value of all the work the permittee has performed upon the land under the permit in connection with prospecting and exploration work. Within 30 days from the date the board gives the permittee notice of the issuance of the mining lease or within a further time as the board upon good cause shown allows, the permittee may remove any machinery, equipment, improvements, and other property placed on the land by the permittee.

History: En. Sec. 15, Ch. 148, L. 1937; amd. Sec. 9, Ch. 22, L. 1971; Sec. 81-615, R.C.M. 1947; redes. 81-601.1 and amd. by Sec. 47, Ch. 428, L. 1973; R.C.M. 1947, 81-601.1(part); amd. Sec. 7, Ch. 18, L. 1999.

Part 2
Nonmetallic Minerals, Excluding Coal, Oil, and Gas

77-3-201. Nonmetallic mineral leases authorized. When there are found upon state lands deposits of stone, limestone, oil shale, clay, bentonite, calcite, talc, mica, ceramic, asbestos, marble, diatomite, gravel or sand, or phosphate, sodium, potash, sulfur, fluorite or barite, or any

other nonmetallic minerals, but not including coal, oil, or gas, valuable for building, mining, or other commercial purposes, the board may in its discretion issue permits or leases to private persons for the removal and disposition of the above-named deposits upon such terms and conditions as the board may determine.

History: En. Sec. 52, Ch. 60, L. 1927; re-en. Sec. 1805.52, R.C.M. 1935; amd. Sec. 1, Ch. 194, L. 1945; amd. Sec. 1, Ch. 147, L. 1953; amd. Sec. 1, Ch. 207, L. 1961; amd. Sec. 49, Ch. 428, L. 1973; R.C.M. 1947, 81-701(part).

Cross-References

Authorization, Art. X, sec. 4, Mont. Const.; The Enabling Act, sec. 11 (see anno. vol. 1); 77-1-204.
Eminent domain — surface rights rest in others, except for strip or open-pit mining, 70-30-102.
Mining permit required, 82-4-221.
Opencut, nonmetallic mining reclamation, Title 82, ch. 4, part 4.
Reclamation and Development Grants Program Act, Title 90, ch. 2, part 11.

77-3-202. Fee. The fee for issuing the lease is the same as for an oil and gas lease.

History: En. Sec. 52, Ch. 60, L. 1927; re-en. Sec. 1805.52, R.C.M. 1935; amd. Sec. 1, Ch. 194, L. 1945; amd. Sec. 1, Ch. 147, L. 1953; amd. Sec. 1, Ch. 207, L. 1961; amd. Sec. 49, Ch. 428, L. 1973; R.C.M. 1947, 81-701(part).

77-3-203. Duration of lease. (1) (a) Subject to subsections (1)(b) and (1)(c), a lease must be issued for:

(i) a primary term of not less than 10 years and to be held by production for as long thereafter as nonmetallic minerals are produced in commercial quantities; or

(ii) if the lands are subject to limitations contained in grants by which the state acquired title to the lands or mineral rights to be leased, a period determined by the board to be in accordance with the limitations.

(b) If a lease issued under this part, a corresponding permit issued pursuant to Title 82, chapter 4, or a proposed evaluation under Title 75 is enjoined or ineffective due to a temporary restraining order, preliminary injunction, or other equitable relief, or if its issuance is postponed by a challenge requiring further agency review, then the primary term of the lease described in subsection (1)(a) must be commensurately extended for the period that the lease, permit, or action is enjoined or ineffective.

(c) If a lease is issued under this part and an exploration license as provided for in 82-4-332 is obtained on the leased lands, the lease must be extended commensurately with the period for which the exploration license is authorized and for which exploration is occurring on the leased lands.

(2) (a) As long as a lessee complies with the terms and conditions of a lease, the lease may not be terminated at the end of the primary term of the lease described in subsection (1)(a) if the lands are covered and described by a mining permit issued under Title 82, chapter 4, or are described in a mine-site location permit under Title 82, chapter 4.

(b) If nonproduction may result in the termination of a lease under this part, the lessee may provide notice to the board of the lessee's election to pay a nonproduction royalty to extend the primary term of the lease for a one-time, subsequent term of 5 years. The board may determine the appropriate nonproduction royalty payment to be paid by the lessee.

(3) As used in this section, the following definitions apply:

(a) "Commercial quantities" means a quantity of nonmetallic minerals that can be sold at a profit.

(b) "Covered and described" or "described" means, under a mine permit or a mine-site location permit, that the leased lands or a portion of the leased lands within or outside the boundaries of the permit area are expected to be affected or disturbed at some point during the term of the permittee's exploration activities or surface mining or underground mining operations and are identified in the permit or permit application.

History: En. Sec. 52, Ch. 60, L. 1927; re-en. Sec. 1805.52, R.C.M. 1935; amd. Sec. 1, Ch. 194, L. 1945; amd. Sec. 1, Ch. 147, L. 1953; amd. Sec. 1, Ch. 207, L. 1961; amd. Sec. 49, Ch. 428, L. 1973; R.C.M. 1947, 81-701(part); amd. Sec. 4, Ch. 617, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 617, L. 2025. Amendment effective May 13, 2025.

Cross-References

Leases for production of minerals — term of years as provided by Legislature, The Enabling Act, sec. 11 (see anno. vol. 1).

77-3-204. Royalty provisions. (1) All such leases shall be upon a royalty basis calculated upon a gross value by weight or cubic measurement as is most favorable for the particular substance being mined or extracted from the lands. The gross value shall be determined at the mine or site of operation, and the rates shall be the same that ordinarily would be charged by private owners under similar circumstances or as in the determination of the board is fair and reasonable.

(2) The board may demand a cash deposit to guarantee the payment of the royalties, a surety bond, or both a cash deposit and bond, as the board may determine.

History: En. Sec. 52, Ch. 60, L. 1927; re-en. Sec. 1805.52, R.C.M. 1935; amd. Sec. 1, Ch. 194, L. 1945; amd. Sec. 1, Ch. 147, L. 1953; amd. Sec. 1, Ch. 207, L. 1961; amd. Sec. 49, Ch. 428, L. 1973; R.C.M. 1947, 81-701(part).

Cross-References

Powers and duties of Board, 77-1-202.

77-3-205. Report of lessee and payment of royalty. (1) On or before the last day of each month, every holder of a producing lease under this part shall make a report to the department on a form the department prescribes showing:

(a) the amount of substances mined or extracted from the lands in the preceding month;

(b) the price obtained;

(c) the total amount of sales; and

(d) any additional information required.

(2) The report must be verified by the lessee or some responsible person having knowledge of the facts and must be accompanied by payment of the amount to the state as royalty for the month covered by the report.

History: En. Sec. 53, Ch. 60, L. 1927; re-en. Sec. 1805.53, R.C.M. 1935; amd. Sec. 2, Ch. 194, L. 1945; amd. Sec. 50, Ch. 428, L. 1973; R.C.M. 1947, 81-702(part); amd. Sec. 8, Ch. 96, L. 2013.

77-3-206. Disposition of royalties, fees, and penalties. The royalties, fees, and penalties received under these leases shall be credited to the various funds to which they properly belong in the same manner as is now provided for crediting the same under oil and gas leases.

History: En. Sec. 53, Ch. 60, L. 1927; re-en. Sec. 1805.53, R.C.M. 1935; amd. Sec. 2, Ch. 194, L. 1945; amd. Sec. 50, Ch. 428, L. 1973; R.C.M. 1947, 81-702(part).

Cross-References

Public school fund — revenue, Art. X, sec. 2 and 5, Mont. Const.; 20-9-601.

Trust and agency fund types, 17-2-102.

Interest and income money, 20-9-341.

Portion of income to go to development of state lands, Title 77, ch. 1, part 6.

Disposition of royalties and other money collected under oil and gas leases — credited to general fund unless otherwise disposed of, 77-3-436.

77-3-207. Land leased for other purposes. Such portions of the section or other subdivision of the land on which such deposits are located as are not needed for the quarrying or digging and removal of the stone, limestone, oil shale, clay, sand, or gravel may be leased for grazing or agricultural purposes the same as other state lands. In the case that grazing or agricultural leases are issued they shall provide for a right-of-way across the land for the removal of the stone, limestone, oil shale, clay, gravel, sand, or other deposits, but the rights of the lessee shall also be duly protected.

History: En. Sec. 54, Ch. 60, L. 1927; re-en. Sec. 1805.54, R.C.M. 1935; R.C.M. 1947, 81-703.

Cross-References

State grant of easements, Title 77, ch. 2, part 1.

77-3-208. Stone, gravel, and sand permits for public use. (1) The board may in its discretion issue permits upon such terms and conditions it determines to the department of transportation, the board of county commissioners of any county of the state, or to the governing body of a city or town and of any other political subdivision of the state granting them the right to take, remove, and use stone, gravel, or sand from any state lands that have not been sold under certificate of purchase or otherwise for the construction, maintenance, and improvement of public roads, highways, bridges, streets, or alleys.

(2) The rights of lessees to the lands on which such stone, gravel, or sand may be located shall be properly safeguarded under the terms of the permits.

History: En. Sec. 55, Ch. 60, L. 1927; re-en. Sec. 1805.55, R.C.M. 1935; amd. Sec. 51, Ch. 428, L. 1973; R.C.M. 1947, 81-704; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References
Sale under certificate of purchase, 77-2-327.

77-3-209 and 77-3-210 reserved.

77-3-211. Limitation on public inspection rights. The department shall withhold from public inspection any information obtained from a lessee under this part if the information relates to proprietary geological information. The withholding is effective for as long as the department considers necessary, but in no event may be less than 5 years after the expiration of the lease or permit, to protect the lessee's economic interest in the proprietary geologic information against unwarranted injury or to protect the public's best interest.

History: En. Sec. 2, Ch. 105, L. 1989; amd. Sec. 5, Ch. 617, L. 2025.

Compiler's Comments
2025 Amendment: See 2025 Session Law for amendment made by sec. 5, Ch. 617, L. 2025. Amendment effective May 13, 2025.

Cross-References
Right to know, Art. II, sec. 9, Mont. Const.
Right of privacy, Art. II, sec. 10, Mont. Const.

77-3-212. Modification of lease provisions. The board, by agreement with the permittee or lessee, may, in its discretion and upon such terms as it considers best, amend or modify the terms and conditions within the limitations of this part or extend the term of any lease or prospecting permit issued under this part, subject to the limitations contained in 77-3-203.

History: En. Sec. 6, Ch. 617, L. 2025.

Compiler's Comments
Effective Date: Section 8, Ch. 617, L. 2025, provided: "[This act] is effective on passage and approval." Approved May 13, 2025.

Part 3
Coal

Part Cross-References
Educational impact statement, 20-1-208.
Safety in coal mines, Title 50, ch. 73.
Preference given to coal lessees in obtaining mining leases, 77-3-114.
Reclamation, Title 82, ch. 4.
Reclamation and Development Grants Program Act, Title 90, ch. 2, part 11.

77-3-301. Coal leases authorized. In response to an application or on its own initiative, the board may lease in a manner that it considers in the best interests of the state any state lands to which the title is vested in the state and in which the coal or coal rights are not reserved by the United States for exploring for, mining, removing, selling, and disposing of the coal, upon the terms and conditions provided in this section and subject to the rules that the board prescribes.

History: En. Sec. 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part); amd. Sec. 4, Ch. 318, L. 2003.

Cross-References
Authority to grant leases, Art. X, sec. 4, Mont. Const.; The Enabling Act, sec. 11 (see anno. vol. 1); 77-1-204.
Eminent domain — not available for coal mining in certain cases, 70-30-106.
Mineral reservations in state lands, 77-2-304.
Geophysical exploration — permits required, 82-1-101.
Coal mine-site location permit, 82-4-122.
Mining permit required, 82-4-221.

77-3-302. Lands subject to coal leasing. The authority to lease extends to state lands no matter how acquired and extends to state lands which have been sold but in which the coal rights are reserved by the state, whether the lands are under certificate of purchase or patents have been issued.

History: En. Sec. 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part).

Cross-References
Certificates of purchase, 77-2-327.
Patents, 77-2-341.

77-3-303. Rules relating to coal leasing. (1) The board may adopt rules and perform all acts not inconsistent with The Enabling Act, the constitution, and the statutes of this state that it considers necessary and proper relating to the leasing of state land for coal mining purposes.

(2) The board is encouraged to lease the property interests acquired from the federal government in the Crown Butte land exchange for coal mining purposes. The proceeds from the leases must be used for the direct funding of education, including K-12 school districts, institutions of higher education, and vocational-technical education, unless otherwise provided in the transfer agreement.

History: En. Sec. 44, Ch. 60, L. 1927; re-en. Sec. 1805.44, R.C.M. 1935; R.C.M. 1947, 81-507; amd. Sec. 1, Ch. 485, L. 2001.

Cross-References

Full market value for interest in public lands, Art. X, sec. 11, Mont. Const.
Lease for production of hydrocarbons, The Enabling Act, sec. 11 (see anno. vol. 1).
Adoption of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

77-3-304. Protection of rights of purchasers or prior lessees. Whenever the leased lands are under certificate of purchase or patents have been issued and in all cases where the lands are under lease for grazing, agriculture, or similar purposes, care shall be taken in issuing the coal mining lease to protect the rights of the purchaser or lessee.

History: En. Sec, 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part).

Cross-References

Eminent domain — not available for coal mining in certain cases, 70-30-106.
Mineral rights reserved to state upon sale, 77-2-304.
Certificate of purchase, 77-2-327.
Patents, 77-2-341.

77-3-305. Limitations on leasing. (1) The board may not issue leases to any citizen of another country or any person, partnership, corporation, association, or other legal entity controlled by interests foreign to the United States unless that country provides for similar or like privileges to citizens of the United States.

(2) The board shall consider whether the extraction of the coal from those lands by strip-mining methods would adversely affect the methods of recovery of deep minable coal from those operations on those lands in the future.

History: En. 81-511 by Sec. 6, Ch. 358, L. 1975; R.C.M. 1947, 81-511(part); amd. Sec. 1, Ch. 127, L. 1983; amd. Sec. 1, Ch. 332, L. 2011.

77-3-306. Conditions on manner of mining. (1) Every coal lease shall be conditioned upon compliance with Title 82, chapter 4, parts 1 and 2.

(2) These coal leases are subject to the condition that the coal must be mined, handled, and marketed in a manner that will prevent as far as possible all waste of coal and are also subject to the condition that the mining operations shall be carried on in a systematic and orderly manner that will not make subsequent mining operations more difficult or expensive. A violation of any of these conditions is grounds for the forfeiture of the lease after a hearing before the board.

History: En. Sec, 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part).

77-3-307. Improvements of former lessee. (1) When a coal mining lease is applied for on land where mining operations have been carried on by a former lessee and there are surface or underground improvements on the land used at the former operations, disposition must be made of the improvements satisfactory to the board before a new lease is issued. If the owner of the improvements desires to sell the improvements to the new lessee, the new lessee shall pay the owner the reasonable value of the improvements as far as they are suitable for the new mining operations. If they fail to agree on the value of the improvements, the value must be ascertained and fixed as provided in 77-6-306.

(2) Before a new lease is issued, the applicant shall show to the satisfaction of the board that the applicant has paid the owner for the improvements as agreed on between them or as fixed under the provisions of 77-6-306, that the applicant has tendered payment as fixed, or that the owner desires to remove the owner's improvements.

History: En. Sec. 43, Ch. 60, L. 1927; re-en. Sec. 1805.43, R.C.M. 1935; amd. Sec. 32, Ch. 428, L. 1973; R.C.M. 1947, 81-506; amd. Sec. 2557, Ch. 56, L. 2009.

77-3-308. Limitation on public inspection rights. The department may withhold from public inspection any information obtained from a coal mining lessee or permittee under this part if the information relates to the geology of the mining lease or permit. The withholding is effective for as long as the department considers it necessary either to protect the lessee's or permittee's economic interest in the geologic information against unwarranted injury or to protect the public's best interest.

History: En. Sec. 3, Ch. 105, L. 1989.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Right of privacy, Art. II, sec. 10, Mont. Const.

77-3-309 and 77-3-310 reserved.

77-3-311. Form of lease. The board shall prescribe the form of the lease.

History: En. Sec. 39, Ch. 60, L. 1927; re-en. Sec. 1805.39, R.C.M. 1935; amd. Sec. 5, Ch. 257, L. 1965; amd. Sec. 1, Ch. 121, L. 1967; amd. Sec. 6, Ch. 22, L. 1971; amd. Sec. 1, Ch. 291, L. 1971; amd. Sec. 31, Ch. 428, L. 1973; amd. Sec. 2, Ch. 358, L. 1975; R.C.M. 1947, 81-502(part).

77-3-312. Leasing procedures. (1) (a) Prior to issuing a coal mining lease, the board shall evaluate the coal and land proposed to be leased for the purpose of determining the fair market value of any coal reserves located on the land, giving opportunity for and consideration to public comments on the evaluation.

(b) (i) The board may determine fair market value by competitive bid or through an appraisal.

(ii) If no competitive bids are offered on the coal and land to be leased, the board may enter into a lease that is at least at the full market value as determined by the appraisal pursuant to subsection (1)(b)(i).

(2) Except as provided in subsection (1)(b), leases must be awarded by a competitive bid system, including a bonus bid for the first year's rental that may be amortized for a period of up to 5 years at the discretion of the board, and a lease may not be awarded at less than fair market value.

History: En. Sec, 38, Ch. 60, L. 1927; re-en. Sec. 1805.38, R.C.M. 1935; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975; R.C.M. 1947, 81-501(part); amd. Sec. 2, Ch. 332, L. 2011.

Cross-References

Fair market value for disposition of interest in state lands required, Art. X, sec. 11, Mont. Const.

77-3-313. Bond requirements. The board may also demand a surety company bond in a form and in an amount as it may determine, conditioned for the payment of all royalties due the state and for the carrying on of the mining operations according to the terms of the lease. However, a lessee may, in lieu of furnishing a surety company bond, increase the cash deposit provided for under this part in an amount that in the judgment of the board makes the furnishing of a bond unnecessary.

History: En. Sec. 42, Ch. 60, L. 1927; re-en. Sec. 1805.42, R.C.M. 1935; R.C.M. 1947, 81-505; amd. Sec. 3, Ch. 332, L. 2011.

Cross-References

Suretyship, Title 28, ch. 11, part 4.
Corporations as sureties, 33-26-101.

77-3-314. Duration of lease. (1) (a) Except as provided in subsection (1)(b), coal mining leases must be issued for a primary term of 10 years and for as long thereafter as coal is produced from lands in commercial quantities.

(b) If a lease under this part or a corresponding permit issued pursuant to Title 82, chapter 4, parts 1 and 2, is challenged before an administrative agency or in court, the primary term of the lease must be extended for the period of time that the lease or permit was subject to challenge.

(2) A lease not producing coal in commercial quantities at the end of the primary term must be terminated, unless the leased lands are described in a strip mine permit issued under 82-4-221 or in a mine-site location permit under 82-4-122 prior to the end of the primary term, and the lease may not be terminated so long as the lands are covered and described under valid permit.

(3) For the purpose of this part:

(a) "commercial quantities" means that quantity of coal that can be sold at profit in the commercial market;

(b) "covered and described" under a valid permit or "described" in a strip mine or mine-site location permit means that the leased lands or a portion of the leased lands within or outside of the boundaries of the permit area are expected to be affected or disturbed at some point during the life of the permittee's strip-mining or underground-mining operation and are identified in the permittee's permit application.

History: En. Sec. 39, Ch. 60, L. 1927; re-en. Sec. 1805.39, R.C.M. 1935; amd. Sec. 5, Ch. 257, L. 1965; amd. Sec. 1, Ch. 121, L. 1967; amd. Sec. 6, Ch. 22, L. 1971; amd. Sec. 1, Ch. 291, L. 1971; amd. Sec. 31, Ch. 428, L. 1973; amd. Sec. 2, Ch. 358, L. 1975; R.C.M. 1947, 81-502(part); amd. Sec. 4, Ch. 332, L. 2011.

77-3-315. Repealed. Sec. 2, Ch. 538, L. 1981.

History: En. 81-511 by Sec. 6, Ch. 358, L. 1975; R.C.M. 1947, 81-511(part).

77-3-316. Rental and royalty terms. (1) The compensation of the state under all coal mining leases must be upon a rental and royalty basis and must be fixed and determined by the board.

(2) The rental and royalty terms of each lease must be subject to readjustment to reflect fair market value at the end of its primary term of 10 years and at the end of each 5-year period thereafter if the lease is producing coal in commercial quantities.

(3) The rental may be on a per-acre basis or per-ton basis but the rental may not be less than $2 per acre.

(4) (a) The amount of the royalty must be based upon:

(i) the kind, grade, and character of the coal in each particular mine;

(ii) the size, shape, and nature of the coal vein, strata, or body; and

(iii) the shipping and marketing facilities for the product.

(b) Consideration must also be given to every other known factor affecting the value of each particular coal mining lease, but the royalty for the coal mined may not be less than 10% of the f.o.b. mine price of a ton prepared for shipment.

History: (1), (3), (4)En. Sec. 40, Ch. 60, L. 1927; re-en. Sec. 1805.40, R.C.M. 1935; amd. Sec. 3, Ch. 358, L. 1975; Sec. 81-503, R.C.M. 1947; (2)En. Sec. 39, Ch. 60, L. 1927; re-en. Sec. 1805.39, R.C.M. 1935; amd. Sec. 5, Ch. 257, L. 1965; amd. Sec. 1, Ch. 121, L. 1967; amd. Sec. 6, Ch. 22, L. 1971; amd. Sec. 1, Ch. 291, L. 1971; amd. Sec. 31, Ch. 428, L. 1973; amd. Sec. 2, Ch. 358, L. 1975; Sec. 81-502, R.C.M. 1947; R.C.M. 1947, 81-502(part), 81-503; amd. Sec. 5, Ch. 332, L. 2011.

77-3-317. Report and payment of royalty. (1) On or before the last day of each month every holder of a producing coal mining lease shall make a report to the department on a form the department prescribes showing:

(a) the number of tons mined during the preceding calendar month;

(b) the price obtained for the number of tons mined during the preceding calendar month at the mine;

(c) the total amount of all sales; and

(d) any additional information required by the department.

(2) The report must be verified by the lessee and be accompanied by payment of the royalty due the state for the preceding month as shown by the report.

History: En. Sec. 45, Ch. 60, L. 1927; re-en. Sec. 1805.45, R.C.M. 1935; amd. Sec. 33, Ch. 428, L. 1973; R.C.M. 1947, 81-508; amd. Sec. 9, Ch. 96, L. 2013.

77-3-318. Disposition of royalties and other receipts. All fees, rentals, royalties, and bonuses collected under state coal leases shall be paid to the department and credited as follows:

(1) All fees shall be credited to the state general fund.

(2) All rentals and bonuses shall be credited to the income fund of the grant to which the lands under each lease belong.

(3) All moneys collected as royalties shall be credited to the permanent fund arising from the grants to which the lands under lease belong.

History: En. Sec. 47, Ch. 60, L. 1927; re-en. Sec. 1805.47, R.C.M. 1935; amd. Sec. 34, Ch. 428, L. 1973; amd. Sec. 5, Ch. 358, L. 1975; R.C.M. 1947, 81-510.

Cross-References

Public school fund — revenue, Art. X, sec. 2 and 5, Mont. Const.; 20-9-601.

Trust and agency fund types, 17-2-102.

Interest and income money, 20-9-341.
Portion of income to go to development of state lands, Title 77, ch. 1, part 6.

77-3-319 and 77-3-320 reserved.

77-3-321. Repealed. Sec. 8, Ch. 18, L. 1999.
History: En. Sec. 46, Ch. 60, L. 1927; re-en. Sec. 1805.46, R.C.M. 1935; R.C.M. 1947, 81-509.

77-3-322. Obligation to pay royalties under coal lease contract — interest. (1) The obligation arising under a coal lease to pay coal royalties to the department, to deliver coal to a purchaser to the credit of the department, or to pay a portion of the proceeds of the sale of the coal to the department is of the essence in the lease contract.

(2) If the operator under a coal lease fails to pay coal royalties to the department within 120 days after the initial coal produced under the lease is marketed and within 90 days for all coal produced and marketed thereafter, the unpaid royalties must bear interest at the legal rate of interest authorized under 31-1-106 from the date due until paid. The operator may remit semiannually to the department the aggregate of 6 months' royalties if the aggregate amount is less than $50 and annually if the aggregate amount is less than $10.

(3) An action for failure to make payments under the lease or seeking payments under this section must be filed in the district court for the county in which the coal mine is located, and that court has jurisdiction over any actions brought under this section. The prevailing party in a proceeding brought under this section is entitled to recover court costs and reasonable attorney fees.

(4) This section does not apply if the department has elected to take the owner's or assignee's proportionate share of production in kind or if there is a dispute as to the title to the minerals or entitlement to royalties, the outcome of which would affect distribution of royalty payments.
History: En. Sec. 1, Ch. 243, L. 2011.

77-3-323. Audit — notice — action to compel payment. (1) Except as provided in subsection (2), the department may, within 5 years of the filing of a report pursuant to 77-3-317, commence an audit of a lessee's or former lessee's operation to determine whether the report is complete and accurate and whether all royalties owed have been paid. The department shall notify the lessee in writing of the audit. The notice must describe the period for which the audit is being conducted. Upon conclusion of the audit, the department shall notify the lessee of the department's conclusions and, if the department has determined that additional royalties are owed, the basis for that determination. An action to compel payment of royalties due must be commenced within 2 years of the date of mailing the notice.

(2) If a lessee or former lessee, with intent to evade payment of royalties, purposely or knowingly files a false report or purposely or knowingly fails to pay royalties owed, the department may conduct an audit and file an action to collect royalties at any time after the royalties are due.
History: En. Sec. 2, Ch. 243, L. 2011.

Part 4
Oil and Gas

Part Cross-References
Down-hole equipment exempt from taxation, 15-6-213.
Laborers' liens on oil and gas wells and pipelines, Title 71, ch. 3, part 10.
Oil or gas well drilling permits — environmental impact statements, 75-1-201.
Consent of oil and gas lessees required for other mining lease, 77-3-114.
Release of record upon forfeiture of lease — penalty, 82-1-201.
Oil and gas — general provisions, Title 82, ch. 10.
Surface damage and disruption payments — penalty for late payment, 82-10-504.
Oil and gas conservation, Title 82, ch. 11.
Emergencies — notice and hearing, 82-11-151.
Oil and gas production damage mitigation account, 82-11-161.
Reclamation and Development Grants Program Act, Title 90, ch. 2, part 11.

77-3-401. Oil and gas leases authorized. (1) The board is hereby authorized and empowered to lease in such manner as it may determine, not inconsistent with The Enabling Act and the constitution, any state lands to which the title has vested in the state and in which

the oil and gas rights are not reserved by the United States, for prospecting and exploring for oil and gas, mining, drilling, developing, and removing the same upon the terms and conditions herein prescribed to any person, association, corporation, domestic or foreign, or municipality qualified under the constitution and the laws of the state.

(2) This power and authority to lease state lands for such purposes shall extend to and include all lands owned by the state under navigable lakes and streams and shall also extend to and include all those state lands which have been sold but in which the oil and gas rights have been reserved by the state; but in such cases and in all cases where the lands are under lease for grazing, agriculture, or similar purposes, care shall be taken in issuing the oil and gas leases to protect the rights of the purchaser or lessee.

History: En. Sec. 1, Ch. 108, L. 1927; re-en. Sec. 1882.1, R.C.M. 1935; amd. Sec. 1, Ch. 90, L. 1943; amd. Sec. 1, Ch. 261, L. 1947; amd. Sec. 6, Ch. 184, L. 1961; R.C.M. 1947, 81-1701(part).

Cross-References

Authorization to permit leasing, Art. X, sec. 4, Mont. Const.; The Enabling Act, sec. 11 (see anno. vol. 1); 77-1-204.

Reservation of mineral rights to state, 77-2-304.

Geophysical exploration — permits required, 82-1-105.

Authorization of oil and gas leasing by local governments, Title 82, ch. 10, part 2.

Notice of intention to drill or conduct seismic operations, 82-11-122.

77-3-402. Rules. (1) The board shall have the power and authority to prescribe such rules and to do and perform all acts and things not inconsistent with The Enabling Act, the constitution, and the statutes of this state as it may deem necessary and proper relating to the leasing of state lands for oil and gas exploration and development. The board shall formulate rules not inconsistent with law governing the leasing of state lands for oil and gas exploration and development which shall be compiled and printed periodically.

(2) Copies of the rules and notices of changes therein shall be made available to any person desiring a copy thereof at a reasonable cost to be fixed by a rule of the board.

History: En. Sec. 7, Ch. 108, L. 1927; re-en. Sec. 1882.7, R.C.M. 1935; amd. Sec. 1, Ch. 144, L. 1961; R.C.M. 1947, 81-1707.

Cross-References

Promulgation of rules — Montana Administrative Procedure Act, Title 2, ch. 4.

77-3-403. Hearings on questions related to leases. The board is hereby granted full power and authority to order and hold hearings on any matter or question involving oil and gas leases under such rules as it may adopt.

History: En. Sec. 10, Ch. 108, L. 1927; re-en. Sec. 1882.10, R.C.M. 1935; R.C.M. 1947, 81-1710(part).

77-3-404. Limitation on area under single lease. An oil or gas lease issued on state lands may not embrace more than 640 acres, except that any section surveyed by the United States which contains more than 640 acres may be included under one lease.

History: En. Sec. 2, Ch. 108, L. 1927; amd. Sec. 1, Ch. 193, L. 1931; amd. Sec. 1, Ch. 171, L. 1933; re-en. Sec. 1882.2, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1941; amd. Sec. 1, Ch. 91, L. 1943; amd. Sec. 1, Ch. 128, L. 1945; amd. Sec. 1, Ch. 122, L. 1953; amd. Sec. 84, Ch. 428, L. 1973; R.C.M. 1947, 81-1702(part).

77-3-405. Leased lands to be generally compact and contiguous. (1) The lands shall be leased in as compact bodies as the form and areas of the tracts held by the state and offered for lease will permit.

(2) No lease may embrace noncontiguous subdivisions of lands unless the subdivisions are within an area comprising not more than 1 square mile.

History: En. Sec. 1, Ch. 161, L. 1955; amd. Sec. 12, Ch. 22, L. 1971; amd. Sec. 85, Ch. 428, L. 1973; amd. Sec. 1, Ch. 136, L. 1974; amd. Sec. 1, Ch. 379, L. 1975; R.C.M. 1947, 81-1702.1(3).

77-3-406. Number of leases which one person may hold. Any person, association, corporation, or municipality qualified to hold an oil or gas lease on state lands may receive from the board or take through assignment or succession, will, judgment, decree, or otherwise through the operation of law more than one oil and gas lease to state lands, subject to such regulations and limitations as the board prescribes.

History: En. Sec. 2, Ch. 108, L. 1927; amd. Sec. 1, Ch. 193, L. 1931; amd. Sec. 1, Ch. 171, L. 1933; re-en. Sec. 1882.2, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1941; amd. Sec. 1, Ch. 91, L. 1943; amd. Sec. 1, Ch. 128, L. 1945; amd. Sec. 1, Ch. 122, L. 1953; amd. Sec. 84, Ch. 428, L. 1973; R.C.M. 1947, 81-1702(part).

77-3-407. New leases on lands leased prior to February 28, 1953. (1) In the case of all leases issued under the provisions in force prior to February 28, 1953, where oil or gas is being produced, the board shall at the expiration thereof or termination for any cause advertise the land held thereunder for re-leasing and lease the same to the highest responsible bidder therefor at public auction on the terms then existing for such leasing. Any person, association, firm, or corporation who held such lease at the expiration thereof shall have the privilege of re-leasing the same at such highest responsible bid offered therefor upon such terms and conditions as may be prescribed by the board or the legislature.

(2) In the case of all leases issued under the provisions in force prior to February 28, 1953, where oil or gas is not being produced, the board may at the expiration thereof or termination for any cause advertise the land held thereunder for re-leasing and lease the same to the highest responsible bidder therefor at public auction if in the judgment of the board such advertising and public auction will result in leasing of the land on terms advantageous to the state.

History: En. Sec. 15, Ch. 108, L. 1927; amd. Sec. 3, Ch. 171, L. 1933; re-en. Sec. 1882.15, R.C.M. 1935; amd. Sec. 1, Ch. 104, L. 1965; R.C.M. 1947, 81-1715.

77-3-408. Certain state officers not to be interested in leases. It is unlawful for any officer or employee of any agency of the executive branch of state government who is required to inspect or examine oil or gas wells or otherwise to gather field information in regard to prospecting for oil and gas or the production thereof to lease or to become interested in any manner in any oil or gas lease on state lands.

History: En. Sec. 20, Ch. 108, L. 1927; amd. Sec. 4, Ch. 171, L. 1933; re-en. Sec. 1882.20, R.C.M. 1935; amd. Sec. 93, Ch. 428, L. 1973; R.C.M. 1947, 81-1720.

Cross-References

Public officers not to have interest in contracts, 2-2-201.
Official misconduct, 45-7-401.

77-3-409. Misconduct of officers in relation to oil and gas leases. (1) Any officer, employee, or representative of the state who directly or indirectly accepts any money or any other valuable thing, except the officer's, employee's, or representative's regular and lawful compensation, for performing or not performing an official act under the provisions of this part or for modifying the performance of an official act is guilty of a felony.

(2) Any officer, employee, or representative of the state who knowingly and willfully makes any false classification or appraisal of any state land or interest of the state in the land or of any oil and gas deposits in which the state is interested or who knowingly and willfully makes any false report of any classification or appraisal is guilty of a felony.

History: En. Sec. 21, Ch. 108, L. 1927; re-en. Sec. 1882.21, R.C.M. 1935; R.C.M. 1947, 81-1721; amd. Sec. 2558, Ch. 56, L. 2009.

Cross-References

Public employee standards of conduct, Title 2, ch. 2.
Jurisdiction relating to felony, 45-1-201.
Felony defined, 45-2-101.
Bribery, 45-7-101.
Official misconduct, 45-7-401.
Felony — when no penalty specified, 46-18-213.

77-3-410. False statements relating to oil and gas leases. Any person who shall knowingly make and file in any department, bureau, or office of the state any application, statement, or report in writing required by regulation promulgated pursuant to the provisions of this part containing any false statement of a material fact shall be guilty of a felony.

History: En. Sec. 22, Ch. 108, L. 1927; re-en. Sec. 1882.22. R.C.M. 1935; R.C.M. 1947, 81-1722.

Cross-References

False swearing — misdemeanor, 45-7-202.
Unsworn falsification to authorities — misdemeanor, 45-7-203.

77-3-411. Notice of lease sale required. (1) Within 15 days of the previous oil and gas lease sale, the department shall publish the date and place of the upcoming sale in a publication of general circulation in Montana and on the department's website.

(2) (a) The department shall accept nominations of tracts for an upcoming sale until 77 days prior to the date of the sale.

(b) Upon receipt of a nomination by the department, the location of the tracts is public information.

(3) At least twice, the department shall publish a notice containing the time and place of the sale, a statement that all sales will be by competitive bidding, and the number of tracts in each county offered for sale at the time of the notice on the department's website and in a publication of general circulation in Montana:

(a) not less than 63 days before the date of an upcoming sale; and

(b) between 21 days and 35 days before the date of the sale.

(4) In a publication of general circulation in each county where a tract is nominated for sale, the department shall publish a notice in compliance with subsection (3), except that each notice needs to contain only the number of tracts nominated for sale in that county and notice that a description and maps of tracts nominated are available on the department's website.

(5) The department shall publish on its website a description and maps of all tracts to be offered for sale.

(6) (a) Except as provided in subsection (6)(b), the department shall provide notice by first-class mail to surface owners of a tract being offered for sale using the most current known property owners of record as shown in the records of the county clerk and recorder of the county where the tract is located.

(b) The notice in subsection (6)(a) is not required if the surface is managed by the department pursuant to Title 77, chapter 1.

(7) The notice required by subsection (6) must contain the time and place of the sale, a statement that all sales will be by competitive bidding, and a description and area map of each tract offered for sale.

History: En. Sec. 1, Ch. 432, L. 2009; amd. Sec. 1, Ch. 206, L. 2019.

77-3-412 through 77-3-420 reserved.

77-3-421. Duration of lease. (1) All state oil and gas leases entered by the board shall be granted for a primary term of not more than 10 years or less than 5 years and as long thereafter as oil or gas in paying quantities is produced, on condition that all drilling, rental, and other obligations are fully kept and performed by the lessee. However, leases for a period of less than 5 years may be issued if the board determines that such shorter term is necessary to ensure full compensation for the oil and gas resource.

(2) Oil or gas produced from any part of a unit in which state lands are included by virtue of a pooling agreement are considered to be produced from the state lands therein within the meaning of this part.

(3) The board may grant reasonable extensions of the primary term of a state oil or gas lease upon a showing that the lessee, despite due care and diligence, is or has been directly or indirectly prevented from exploring, developing, or operating the lease or is threatened with substantial economic loss, due to litigation regarding the lease or another lease in the immediate area held by the same lessee, state compliance with the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, rules adopted under Title 75, chapter 1, or adverse conditions caused by natural occurrences.

History: En. Sec. 2, Ch. 108, L. 1927; amd. Sec. 1, Ch. 193, L. 1931; amd. Sec. 1, Ch. 171, L. 1933; re-en. Sec. 1882.2, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1941; amd. Sec. 1, Ch. 91, L. 1943; amd. Sec. 1, Ch. 128, L. 1945; amd. Sec. 1, Ch. 122, L. 1953; amd. Sec. 84, Ch. 428, L. 1973; R.C.M. 1947, 81-1702(part); amd. Sec. 1, Ch. 165, L. 1983; amd. Sec. 1, Ch. 272, L. 1989.

Cross-References

Term of years as provided by Legislature for oil and gas lease, The Enabling Act, sec. 11 (see anno. vol. 1).

Pooling agreements, 77-3-430.

77-3-422. Lease extension clause. If oil or gas is not being produced from the leased premises at the expiration of the primary term of the lease but the owner of the lease is then engaged in drilling on the premises for oil or gas, then the lease continues in force so long as such drilling operations are being diligently prosecuted. If oil or gas is recovered from any such well drilled or being drilled at or after the expiration of the primary term of the lease, the lease continues in force so long as oil or gas in paying quantities is produced from the leased premises.

History: En. Sec. 2, Ch. 108, L. 1927; amd. Sec. 1, Ch. 193, L. 1931; amd. Sec. 1, Ch. 171, L. 1933; re-en. Sec. 1882.2, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1941; amd. Sec. 1, Ch. 91, L. 1943; amd. Sec. 1, Ch. 128, L. 1945; amd. Sec. 1, Ch. 122, L. 1953; amd. Sec. 84, Ch. 428, L. 1973; R.C.M. 1947, 81-1702(part).

77-3-423. Annual rental. (1) The annual money rentals to be paid to the state for oil and gas leases must be set by the board but may not be less than $1.50 for each acre of land leased.

(2) In addition to the sum of $1.50 per acre, the rental for the first year of the lease must also include any sum in excess of $1.50 per acre offered and accepted for the first year's rental.

(3) The annual rental under this section may not be less than $100 a year.

(4) The first year's rental must be paid before the issuance of the lease. The rentals for each subsequent year of the lease are due and payable before the beginning of the subsequent lease year. Upon failure to make the rental payment, the lease terminates unless there is a well currently being drilled, a producing well, or a shut-in well approved by the department on the lease. Rental paid for any year must be credited against any royalty that accrues during that year.

History: En. Sec. 1, Ch. 161, L. 1955; amd. Sec. 12, Ch. 22, L. 1971; amd. Sec. 85, Ch. 428, L. 1973; amd. Sec. 1, Ch. 136, L. 1974; amd. Sec. 1, Ch. 379, L. 1975; R.C.M. 1947, 81-1702.1(1), (2); amd. Sec. 1, Ch. 163, L. 1989; amd. Sec. 1, Ch. 34, L. 1997.

Cross-References

Forfeiture and cancellation of leases — hearing, 77-3-440.

77-3-424. Power to terminate lease in absence of commencement of drilling or payment of delay drilling penalty. (1) In every oil and gas lease granted after March 3, 1955, under this part there must be reserved to the board full power to declare termination of the lease at the end of the fifth year or any subsequent year of the primary term of the lease upon failure of the lessee to either:

(a) commence the drilling of a well for oil and gas upon the leased premises; or

(b) pay a delay drilling penalty as follows:

(i) for the sixth year of the lease $1.25 per acre per year; and

(ii) for the remainder of the primary term of the lease an amount per acre per year as the board may in its discretion determine.

(2) Notice of that determination must be given to the lessee, and if the lessee applies for a hearing thereon within 10 days after receipt of the notice, the determination becomes final only after the hearing has been held.

(3) This annual delay drilling penalty must be paid each year in advance. The board shall refund delay drilling penalties paid on a lease for any year in which the lessee commences drilling on that lease.

(4) If a well for oil and gas is commenced, the drilling of the well must be prosecuted with due diligence and dispatch to such depth as is necessary to make a reasonable test for oil or gas.

History: En. Sec. 2, Ch. 161, L. 1955; amd. Sec. 1, Ch. 251, L. 1965; amd. Sec. 86, Ch. 428, L. 1973; R.C.M. 1947, 81-1702.2(part); amd. Sec. 9, Ch. 15, L. 1979; amd. Sec. 5, Ch. 163, L. 1989.

Cross-References

Drilling permit — requirement, 82-11-134.

77-3-425. Dry hole clause. If the first well drilled is a dry hole and if a second well is not commenced on the land covered by the lease before the next anniversary of the lease following the completion of the well, the lease may be terminated by the board unless the lessee, on or before such anniversary, resumes payment of any delay drilling penalties imposed by the board. Upon the resumption of payment of any required delay drilling penalties and their continued payment, the lease continues in force during the primary term as though there had been no interruption in the delay drilling penalty payments.

History: En. Sec. 2, Ch. 161, L. 1955; amd. Sec. 1, Ch. 251, L. 1965; amd. Sec. 86, Ch. 428, L. 1973; R.C.M. 1947, 81-1702.2(part); amd. Sec. 2, Ch. 163, L. 1989.

Cross-References

Expenditure of funds from bonds for plugging wells, 82-11-136.

77-3-426. Lessee to prevent waste. Oil and gas leases issued under the provisions of this part must all be subject to the conditions that the lessee in conducting explorations and mining or drilling operations shall use all reasonable precautions to prevent waste of oil or gas developed in the land or the entrance of water through wells drilled by the lessee to the oil or gas sands or oil-bearing or gas-bearing strata to the destruction or injury of the oil or gas deposits.

Violations of any of these conditions constitutes grounds for the forfeiture of the lease after a hearing on the violations before the board.

History: En. Sec. 1, Ch. 108, L. 1927; re-en. Sec. 1882.1, R.C.M. 1935; amd. Sec. 1, Ch. 90, L. 1943; amd. Sec. 1, Ch. 261, L. 1947; amd. Sec. 6, Ch. 184, L. 1961; R.C.M. 1947, 81-1701(part); amd. Sec. 2559, Ch. 56, L. 2009.

Cross-References

Forfeiture and cancellation of leases, 77-3-440.

Oil and gas conservation, Title 82, ch. 10.

77-3-427. Provision for offset wells — compensatory royalties. (1) Oil and gas leases granted by the state shall contain suitable provisions imposing upon all lessees the obligation to drill offset wells wherever and whenever necessary to prevent waste and damage to the property of the state.

(2) The board may allow the lessee the following options in lieu of drilling an offset well:

(a) releasing the lands in question; or

(b) paying a compensatory royalty on a nonproducing lease if the board determines that such compensatory royalty will fully compensate the state for waste and damage to the property of the state. The compensatory royalty shall be based upon the estimated drainage, as determined by the board, and shall be paid on a monthly basis unless circumstances require otherwise.

(3) If the board or the lessee terminates the lease, that termination does not impair any implied covenant against drainage or the right of the board to seek damages from the lessee for the lessee's failure to protect the lease from drainage of oil or gas by a well adjacent to the state lease.

History: En. Sec. 19, Ch. 108, L. 1927; re-en. Sec. 1882.19, R.C.M. 1935; R.C.M. 1947, 81-1719(part); amd. Sec. 1, Ch. 81, L. 1981; amd. Sec. 3, Ch. 163, L. 1989.

77-3-428. Additional development following completion of productive well. (1) The lessee shall be required, upon completing a commercially productive oil or gas well upon the leased premises, to proceed with reasonable diligence to drill such additional wells to the depth of the formation found commercially productive or to such depth as may be necessary to economically test, develop, and operate the deposits discovered.

(2) No lessee shall, however, be required to drill to completion more than one well under any one lease during any one calendar year or a total number of wells under any one lease in excess of the total number of 40-acre subdivisions of land held under such lease. As to lands found valuable for gas production only, the drilling obligation of the lessee shall be confined to a total number of wells equal to the total number of tracts comprising 160 acres of land included in the lease, except as the drilling of offset oil or gas wells necessary to protect the leased premises and deposits from loss or depletion due to wells drilled on contiguous lands shall require greater diligence in drilling and a greater number of wells to be drilled.

(3) The performance of said well drilling operations may be suspended only by and with the consent of the board during the time oil or gas previously discovered cannot be marketed at a profit or for other good cause shown.

History: En. Sec. 11, Ch. 108, L. 1927; re-en. Sec. 1882.11, R.C.M. 1935; R.C.M. 1947, 81-1711.

77-3-429. Operating agreements. Owners of state oil and gas leases may enter into agreements with other persons, associations, firms, and corporations for drilling and other operations on the state lands under their leases. No such operating agreements are in any way binding upon the state until filed with the board and approved by it. No such drilling or operating agreement in any way affects the obligations of each individual leaseholder to the state.

History: En. Sec. 2, Ch. 108, L. 1927; amd. Sec. 1, Ch. 193, L. 1931; amd. Sec. 1, Ch. 171, L. 1933; re-en. Sec. 1882.2, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1941; amd. Sec. 1, Ch. 91, L. 1943; amd. Sec. 1, Ch. 128, L. 1945; amd. Sec. 1, Ch. 122, L. 1953; amd. Sec. 84, Ch. 428, L. 1973; R.C.M. 1947, 81-1702(3).

77-3-430. *(Temporary)* **Pooling agreements and unit operations.** Nothing contained in this or in prior related laws prevents the board from entering into agreements for the pooling of acreage with others for unit operations for the production of oil or gas or both and the apportionment of oil or gas royalties or both on an acreage or other equitable basis and from modifying leases with respect to delay rentals, delay drilling penalties, and royalties in accordance with such pooling agreements and such unit plans of operation. However, such agreements may not change the percentage of royalties to be paid to the state from the

percentages as fixed in its leases. The board may modify existing pooling and unit agreements so as to commit the state lands included therein for as long as the unitized substance or substances for which the state lands are committed is produced from any lands in the unit.

77-3-430. *(Effective on occurrence of contingency)* **Pooling agreements and unit operations.** Nothing contained in this or in prior related laws prevents the board from entering into agreements for the pooling of acreage with others for unit operations for the storage of carbon dioxide in a geologic storage reservoir or the production of oil or gas or both and the apportionment of oil or gas royalties or both on an acreage or other equitable basis and from modifying leases with respect to delay rentals, delay drilling penalties, and royalties in accordance with pooling agreements and unit plans of operation. However, agreements may not change the percentage of royalties paid to the state from the percentages fixed in its leases. The board may modify existing pooling and unit agreements to commit the state lands included in the pooling or unit agreements for as long as the unitized substance or substances for which the state lands are committed are produced from any lands in the unit.

History: En. Sec. 2, Ch. 108, L. 1927; amd. Sec. 1, Ch. 193, L. 1931; amd. Sec. 1, Ch. 171, L. 1933; re-en. Sec. 1882.2, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1941; amd. Sec. 1, Ch. 91, L. 1943; amd. Sec. 1, Ch. 128, L. 1945; amd. Sec. 1, Ch. 122, L. 1953; amd. Sec. 84, Ch. 428, L. 1973; R.C.M. 1947, 81-1702(4); amd. Sec. 10, Ch. 474, L. 2009.

Compiler's Comments

Contingent Effective Date: Section 31(1), Ch. 474, L. 2009, provided that this section is effective on the date that the board of oil and gas conservation is granted primacy to administer activities at carbon dioxide sequestration wells by the United States environmental protection agency.

Cross-References

Duration of lease, 77-3-421.
Delay of drilling — rentals, 77-3-424.
Royalty percentage, 77-3-432.
Unit operations — spacing, pooling, terms, etc., Title 82, ch. 11, part 2.

77-3-431. Report of lessees. (1) On or before the last day of each month every holder of a producing oil or gas lease shall make a report to the department for the preceding calendar month on a form the department prescribes. The report shall show the amount of oil or gas produced and saved during the preceding month, the price obtained, the total amount of all sales, and any additional information as may be required, and it shall be signed by the lessee or some responsible person having knowledge thereof.

(2) Oil and gas leases granted by the state shall contain suitable provisions imposing upon all lessees the obligation to make such report of operation, production, and sales in the manner, at the time, and to such representative of the state as may be required by the board.

History: (1)En. Sec. 5, Ch. 108, L. 1927; re-en. Sec. 1882.5, R.C.M. 1935; amd. Sec. 2, Ch. 122, L. 1953; amd. Sec. 1, Ch. 171, L. 1963; amd. Sec. 87, Ch. 428, L. 1973; Sec. 81-1705, R.C.M. 1947; (2)En. Sec. 19, Ch. 108, L. 1927; re-en. Sec. 1882.19, R.C.M. 1935; Sec. 81-1719, R.C.M. 1947; R.C.M. 1947, 81-1705(part), 81-1719(part).

Cross-References

Payment of royalty to accompany report, 77-3-435.

77-3-432. Royalty. In each oil and gas lease granted by the state under this part, there must be reserved to the state as consideration for the lease a royalty in all oil and gas produced and saved from all lands covered by the lease and not used for light, fuel, and operation purposes on the leased premises, which must be equivalent to the full market value, as ascertained by the board at the date of the lease, of the estate or interest of the state in the lands and oil and gas deposits disposed of under the lease. The royalty reservation must be set by the board but may not be less than 12½% on gas and not less than 12½% on oil or casinghead gasoline for each producing well for the calendar month. The state may share the expense of transporting the oil to the nearest market on a basis proportional to the state's royalty interest in the oil and at a rate per mile acceptable to the department.

History: En. Sec. 4, Ch. 108, L. 1927; re-en. Sec. 1882.4, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1951; amd. Sec. 1, Ch. 103, L. 1965; amd. Sec. 2, Ch. 379, L. 1975; R.C.M. 1947, 81-1704(part); amd. Sec. 1, Ch. 136, L. 1987; amd. Sec. 4, Ch. 163, L. 1989; amd. Sec. 2, Ch. 34, L. 1997.

Cross-References

Disposition of royalties and other money, 77-3-436.
Limitation on overriding royalties and payments out of production, 77-3-444.
Obligation to pay royalties as essence of contract — interest, 82-10-103.

77-3-433. Shut-in gas royalty. The royalty on gas, including casinghead gas and all gaseous substances not sold or used off the premises, must be at the rate of $400 per lease each year or the amount of the annual rental provided in the lease, whichever is the greater, payable on or before the annual anniversary date of the lease. As long as the leased lands contain a well capable of production in paying quantities and the requisite payment is made, the lease must be considered as a producing lease under the lease terms.

History: En. Sec. 4, Ch. 108, L. 1927; re-en. Sec. 1882.4, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1951; amd. Sec. 1, Ch. 103, L. 1965; amd. Sec. 2, Ch. 379, L. 1975; R.C.M. 1947, 81-1704(part); amd. Sec. 3, Ch. 34, L. 1997.

Cross-References

Disposition of royalties, 77-3-436.

77-3-434. Manner of making royalty payment. Such lease shall provide for the rendering of payment of such royalty on all oil and gas produced and saved and sold or used off the premises in the following manner and upon the following terms:

(1) the lessee shall pay to the state in cash, for all oil and gas royalty reserved, the posted field price existing on the day such oil or gas is run into any pipeline or storage tank to the credit of the lessee, plus any bonus actually paid or agreed to be paid to the lessee for such oil or gas; or

(2) at the option of the state exercised in writing by the board not oftener than every 30 days, the lessee shall deliver the state's royalty oil or gas free of cost or deductions into the pipeline to which the wells of the lessee may be connected or into any storage designated by the state and connected with such wells.

History: En. Sec. 4, Ch. 108, L. 1927; re-en. Sec. 1882.4, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1951; amd. Sec. 1, Ch. 103, L. 1965; amd. Sec. 2, Ch. 379, L. 1975; R.C.M. 1947, 81-1704(part).

77-3-435. Payments due to state — audit — notice — action. (1) The report under 77-3-431 must be accompanied by payment of the amount due the state as royalty for the month covered by the report unless the state's royalty is being or has been paid directly by the purchaser. However, when the amount of royalty due from a lease is determined by the board to be so small as to make it uneconomical to collect monthly, the board may authorize royalty payments to be made semiannually.

(2) Oil and gas leases granted by the state must contain suitable provisions imposing upon all lessees the obligation to make payments due the state in the manner, at the time, and to the representative of the state that may be required by the board.

(3) Except as provided in subsection (4), the department may, within 7 years of the filing of a report pursuant to 77-3-431, commence an audit of a lessee's or a former lessee's operation to determine whether the report is complete and accurate and whether all royalties owed have been paid. The department shall notify the lessee in writing of the audit. The notice must describe the period for which the audit is being conducted. Upon conclusion of the audit, the department shall notify the lessee of the department's conclusions and, if the department has determined that additional royalties are owed, the basis for that determination. An action to compel payment of royalties due must be commenced within 2 years of the date of mailing the notice.

(4) If a lessee or former lessee, with intent to evade payment of royalties, purposely or knowingly files a false report or purposely or knowingly fails to pay royalties owed, the department may conduct an audit and file an action to collect royalties at any time after the royalty is due.

History: (1)En. Sec. 5, Ch. 108, L. 1927; re-en. Sec. 1882.5, R.C.M. 1935; amd. Sec. 2, Ch. 122, L. 1953; amd. Sec. 1, Ch. 171, L. 1963; amd. Sec. 87, Ch. 428, L. 1973; Sec. 81-1705, R.C.M.; (2)En. Sec. 19, Ch. 108, L. 1927; re-en. Sec. 1882.19, R.C.M. 1935; Sec. 81-1719, R.C.M. 1947; R.C.M. 1947, 81-1705(part), 81-1719(part); amd. Sec. 4, Ch. 34, L. 1997.

77-3-436. Disposition of royalties and other money. All fees, rentals, penalties, royalties, and bonuses collected for or under state oil and gas leases shall be paid to the department and credited as follows:

(1) All fees and penalties shall be credited to the state general fund.

(2) All rentals shall be credited to the income fund of the grant to which the lands under each lease belong.

(3) All moneys collected as royalties and bonuses shall be credited to the permanent fund arising from the grant to which the land under each particular lease belongs and become and

forever remain an inseparable and inviolable part thereof. However, all royalties and bonuses collected from the lands forming part of the capitol building grant shall be available as income, the same as all other receipts from such lands.

(4) All moneys received as rentals, royalties, and bonuses for or under leases on state lands and not held in trust for the public schools of the state or for any state institution shall be credited to the state general fund unless other disposition is provided by law.

History: En. Sec. 12, Ch. 108, L. 1927; re-en. Sec. 1882.12, R.C.M. 1935; amd. Sec. 44, Ch. 100, L. 1973; amd. Sec. 89, Ch. 428, L. 1973; R.C.M. 1947, 81-1712; amd. Sec. 1, Ch. 353, L. 1985.

Cross-References

Public school fund — revenue, Art. X, sec. 2 and 5, Mont. Const.; 20-9-601.
Trust and agency fund types, 17-2-102.
Interest and income money, 20-9-341.
Portion of income to go to development of state lands, Title 77, ch. 1, part 6.

77-3-437. Amendment of existing leases. The owner or owners of any existing state oil and gas lease shall have the right to exchange it for an amended lease containing the same provisions as to the term of said lease as are then provided by law for state oil and gas leases upon filing a written application therefor and upon payment of a sum which is the full market value of the exchange, as determined by the board. The amended lease shall be subject to all other provisions, including rents and royalties, contained in the original lease and shall bear the same commencement date as the original lease.

History: En. Sec. 8, Ch. 108, L. 1927; re-en. Sec. 1882.8, R.C.M. 1935; amd. Sec. 3, Ch. 122, L. 1953; R.C.M. 1947, 81-1708.

77-3-438. Assignments of leases. (1) The assignment of any oil and gas lease issued under this part, either in whole or as to subdivisions of land embracing not less than 40 acres covered thereby, made to an assignee qualified as provided herein is permitted. Such assignment is not, however, binding upon the state until filed with the department and accompanied by the required fees, together with such proof of qualifications required by the board, and approved by the board or its lawful representative. The approval of any assignment so filed and supported may not be withheld in any case where the rights or interest of the state in the property assigned will not in the judgment of the board be prejudiced thereby, and the decision of the board in all cases is subject to appeal upon proper court proceedings.

(2) All other assignments of oil and gas leases issued under this part or interests therein are subject to approval by the board and are binding upon the state in the discretion of the board.

History: En. Sec. 16, Ch. 108, L. 1927; re-en. Sec. 1882.16, R.C.M. 1935; amd. Sec. 90, Ch. 428, L. 1973; R.C.M. 1947, 81-1716.

77-3-439. Surrender of leases. The lessee under any oil and gas lease granted by the state may at the termination of any rental year, by giving to the department 30 days' previous notice in writing, surrender and relinquish the lease to the state in whole or as to any legal subdivision of the lands covered thereby and be discharged from any obligation not yet accrued as to lands so surrendered and relinquished without prejudice to the continuance of the lease as to lands not surrendered or relinquished.

History: En. Sec. 18, Ch. 108, L. 1927; re-en. Sec. 1882.18, R.C.M. 1935; amd. Sec. 92, Ch. 428, L. 1973; R.C.M. 1947, 81-1718.

77-3-440. Forfeiture and cancellation of leases. (1) All oil and gas leases granted by the state pursuant to the terms of this part shall provide for forfeiture and cancellation thereof upon failure of the lessee to fully discharge the obligations provided therein, after written notice from the state and reasonable time allowed to the lessee for performance of any undertaking or obligation specified in such notice concerning which the lessee is in default.

(2) Any lessee, upon application therefor, shall be granted a hearing on any notice or demand of the board before any lease is declared forfeited or canceled by the board.

History: En. Sec. 10, Ch. 108, L. 1927; re-en. Sec. 1882.10, R.C.M. 1935; R.C.M. 1947, 81-1710(part).

Cross-References

Release of record upon forfeiture of lease — penalty, 82-1-201.

77-3-441. Restriction on new lease following termination of old lease. In all cases where an oil and gas lease issued after March 3, 1955, is surrendered for cancellation before its expiration, relinquished to the state, or canceled through proceedings on the part of the state, no new lease on the lands under such lease may be issued within 30 days from the date of cancellation or relinquishing. This restriction does not apply, however, in cases of bona fide assignment.

History: En. Sec. 1, Ch. 161, L. 1955; amd. Sec. 12, Ch. 22, L. 1971; amd. Sec. 85, Ch. 428, L. 1973; amd. Sec. 1, Ch. 136, L. 1974; amd. Sec. 1, Ch. 379, L. 1975; R.C.M. 1947, 81-1702.1(4).

77-3-442. Disposition of property of lessee upon termination of lease. (1) Upon the termination for any cause of a lease issued under this part, the former lessee has 6 months after the date of the termination to remove from the premises all machinery, fixtures, improvements, buildings, and equipment belonging to the lessee, except for casing in the wells and other equipment or apparatus necessary for the preservation of any oil or gas well or wells and the structures described in 77-1-134. As to the casing, equipment, and apparatus, any succeeding lessee or, in the event there is no succeeding lessee, the state wishing to have the property left upon the premises shall pay a reasonable value for the property to the former lessee.

(2) If the succeeding lessee or the board is unable to agree with the former lessee upon the reasonable cash value of the casing, equipment, and apparatus, the succeeding lessee or, if there is no succeeding lessee, the state shall pay in cash to the former lessee a sum fixed as a reasonable price by a board of three appraisers, one of whom must be chosen by the successful bidder, one by the former lessee, and the third by the two appraisers chosen. If a person refuses to appoint an appraiser within 15 days of a request to do so by the department, the department may appoint an appraiser for that person. The appraisal must be reported to the respective parties in writing and is final and conclusive.

(3) Except as provided in 77-1-134, unless the department gives written authorization, the former lessee may not remain in possession or manage the land and property formerly covered by the lease. During the time the former lessee remains in authorized possession, the lessee may retain the same share of the products of the premises as inured to the lessee during the term of the lease. Except as provided in 77-1-134, if the state or other bidder does not desire any of the lessee's property as provided in this section, the lessee shall properly plug all wells and remove all of the lessee's property from the premises.

History: En. Sec. 17, Ch. 108, L. 1927; re-en. Sec. 1882.17, R.C.M. 1935; amd. Sec. 91, Ch. 428, L. 1973; R.C.M. 1947, 81-1717; amd. Sec. 5, Ch. 34, L. 1997; amd. Sec. 11, Ch. 472, L. 2009.

77-3-443. Reservation in lease for disposition of surface. In every oil and gas lease granted pursuant to the terms hereof there shall be reserved unto the state the right to sell, lease, or otherwise dispose of the surface of the lands covered thereby, subject always to the rights and privileges granted unto the lessee under such oil and gas lease.

History: En. Sec. 1, Ch. 108, L. 1927; re-en. Sec. 1882.1, R.C.M. 1935; amd. Sec. 1, Ch. 90, L. 1943; amd. Sec. 1, Ch. 261, L. 1947; amd. Sec. 6, Ch. 184, L. 1961; R.C.M. 1947, 81-1701(part).

77-3-444. Limitation on overriding royalties and payments out of production. (1) A person, partnership, or association may not enter into an agreement that in the aggregate creates overriding royalties or payments out of the production of oil and gas in excess of 5% above the landowner's royalty payable to the state of Montana unless that agreement expressly provides that the obligation to pay overriding royalties or payments out of production may be suspended by the director of the department at any time upon a determination that the excess overriding royalties or payments out of production constitute a burden on lease operations to the extent that:

(a) proper and timely development may be retarded;

(b) continued operation of the lease may be impaired; or

(c) premature abandonment of the wells may occur.

(2) This section applies separately to any zone or portion of a lease segregated for computing a royalty due to the state of Montana.

(3) All agreements of any kind creating overriding royalties or payments out of production of oil and gas must be filed with the department within 30 days of their creation by the lessee.

History: En. Sec. 1, Ch. 157, L. 1985; amd. Sec. 287, Ch. 42, L. 1997.

77-3-445 through 77-3-450 reserved.

77-3-451. Limitation on public inspection rights. The department may withhold from public inspection any information obtained from an oil or gas lessee under this part if the information, including drill logs, seismic data, and lithographic descriptions, relates to the geology of the oil or gas lease. The withholding is effective for as long as the department considers it necessary either to protect the lessee's economic interest in the geologic information against unwarranted injury or to protect the public's best interest.

History: En. Sec. 4, Ch. 105, L. 1989.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Right of privacy, Art. II, sec. 10, Mont. Const.

Part 5
Underground Storage of Natural Gas

Part Cross-References

Eminent domain not to prejudice other mineral rights, 70-30-105.
Use of eminent domain to acquire underground gas reservoirs, 82-10-303.
Prohibited activity — injection wells, 82-11-127.

77-3-501. Lease for underground storage of natural gas authorized. (1) The board is hereby authorized and empowered to lease in such manner and upon such terms as it may determine, not inconsistent with The Enabling Act and the constitution, state lands to which the title has vested in the state, subject to existing rights, for use for the underground storage of natural gas upon the terms and conditions herein prescribed, to any natural gas public utility authorized to do business in this state and engaged in the business of transporting or distributing natural gas by means of pipelines into, within, or through this state for ultimate public use.

(2) State lands which may be leased shall include lands in which the deposit of native gas shall have been depleted, provided the lessee pays to the state the amount specified by the board for the native gas then remaining in the lands to be leased.

History: En. Sec. 1, Ch. 213, L. 1955; R.C.M. 1947, 81-1725(1).

Cross-References

Authorizations, Art. X, sec. 4, Mont. Const.; The Enabling Act, sec. 11 (see anno. vol. 1).
Board authority to lease, 77-1-204.

77-3-502. Rules. The board shall have the power and authority to prescribe such rules and to do and perform all acts and things not inconsistent with The Enabling Act, the constitution, and the statutes of this state as it may deem necessary and proper relating to the leasing of state lands for the underground storage of natural gas and the sale of the gas remaining in state lands in a gas field wherein native gas deposits have been depleted.

History: En. Sec. 3, Ch. 213, L. 1955; R.C.M. 1947, 81-1727.

Cross-References

Promulgation of rules — Montana Administrative Procedure Act, Title 2, ch. 4.

77-3-503. Hearings on questions related to leases. The board may order and hold hearings on any matter or question involving leases issued under 77-3-501 under such rules as it adopts.

History: En. Sec. 5, Ch. 213, L. 1955; amd. Sec. 96, Ch. 428, L. 1973; R.C.M. 1947, 81-1729(part).

77-3-504. Lessee's right to hearing. Any lessee, upon application, is entitled to a hearing on any notice or demand of the department before any lease is granted, forfeited, or canceled by the board.

History: En. Sec. 5, Ch. 213, L. 1955; amd. Sec. 96, Ch. 428, L. 1973; R.C.M. 1947, 81-1729(part).

77-3-505. Bond of lessees. A lessee under 77-3-501 shall furnish bond to the state in a form prescribed by the board and in an amount adequate to indemnify the state against loss, damage, or detriment by reason of failure of the lessee to fully discharge the obligations contained in any lease. No bond in excess of $20,000 is required under any one lease.

History: En. Sec. 4, Ch. 213, L. 1955; amd. Sec. 95, Ch. 428, L. 1973; R.C.M. 1947, 81-1728.

77-3-506. Disposition of leased land. In every lease granted pursuant to the terms hereof there shall be reserved unto the state the right to sell, lease, or otherwise dispose of the lands covered thereby, subject always to the rights and privileges granted unto the lessee under a lease provided for by this part.

History: En. Sec. 1, Ch. 213, L. 1955; R.C.M. 1947, 81-1725(2).

77-3-507. Lessee to prevent waste. (1) Leases issued under the provisions of this part shall all be subject to the conditions that the lessee in conducting the underground storage of natural gas shall use all reasonable precautions to prevent waste of oil or gas developed in the land or the entrance of water through wells drilled to store natural gas to the oil or gas sands or oil or gas bearing strata to the destruction or injury of oil or gas deposits.

(2) Violations of any of these conditions shall constitute grounds for the forfeiture of the lease after hearing had thereon before the board.

History: En. Sec. 1, Ch. 213, L. 1955; R.C.M. 1947, 81-1725(3).

Cross-References

Cancellation and forfeiture of lease, 77-3-510.

77-3-508. Duration of lease. All leases issued under 77-3-501 may be granted for a period not exceeding 20 years, and the lessee has a preferential right to renew the lease for an additional period not exceeding 20 years, subject to any terms and conditions the board imposes.

History: En. Sec. 2, Ch. 213, L. 1955; amd. Sec. 94, Ch. 428, L. 1973; R.C.M. 1947, 81-1726.

77-3-509. Disposition of funds. All rentals collected for or under leases issued under 77-3-501 shall be paid to the department and credited in the same manner as rentals from oil and gas leases.

History: En. Sec. 6, Ch. 213, L. 1955; amd. Sec. 97, Ch. 428, L. 1973; R.C.M. 1947, 81-1730.

Cross-References

Public school fund — revenue, Art. X, sec. 2 and 5, Mont. Const.; 20-9-601.
Trust and agency fund types, 17-2-102.
Interest and income money, 20-9-341.
Portion of income to go to development of state lands, Title 77, ch. 1, part 6.
Disposition of funds from oil and gas leases, 77-3-436.

77-3-510. Cancellation and forfeiture of lease. All leases granted under 77-3-501 shall provide for their forfeiture and cancellation upon failure of the lessee to fully discharge the obligations provided therein, after written notice from the department and reasonable time allowed to the lessee for performance of any undertaking or obligation specified in such notice concerning which the lessee is in default.

History: En. Sec. 5, Ch. 213, L. 1955; amd. Sec. 96, Ch. 428, L. 1973; R.C.M. 1947, 81-1729(part).

77-3-511. Termination and surrender of lease. The lessee may at the termination of any rental year, by giving to the department 30 days' previous notice in writing, surrender and relinquish such lease to the state and be thereupon discharged from any obligation not yet accrued.

History: En. Sec. 7, Ch. 213, L. 1955; amd. Sec. 98, Ch. 428, L. 1973; R.C.M. 1947, 81-1731(1).

77-3-512. Disposition of lessee's property upon termination of lease. Upon the termination for any cause of any lease issued under 77-3-501, the lessee has 6 months after the date of the termination within which to remove all machinery, fixtures, improvements, buildings, and equipment belonging to it upon the premises.

History: En. Sec. 7, Ch. 213, L. 1955; amd. Sec. 98, Ch. 428, L. 1973; R.C.M. 1947, 81-1731(2).

CHAPTER 4
RENEWABLE RESOURCES

Part 1 — Geothermal Resources

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Part 1
Geothermal Resources

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Educational impact statements, 20-1-208.
Major facility siting — applicability, 75-20-104.
Geothermal exploration — notification of Department of Natural Resources and Conservation, 75-20-1001.
Geothermal potential — bottom-hole temperatures — public information, 82-11-125.

77-4-101. Geothermal leases authorized. (1) The board may lease state-owned lands, including the beds of navigable streams and the beds of navigable bodies of water, to persons, associations, or corporations for prospecting, exploration, well construction, and the production of geothermal resources.

(2) The board may exercise business discretion in entering into leases under this part.

History: (1)En. 21-2601 by Sec. 1, Ch. 111, L. 1974; Sec. 81-2601, R.C.M. 1947; (2)En. 81-2604 by Sec. 4, Ch. 111, L. 1974; Sec. 81-2604, R.C.M. 1947; R.C.M. 1947, 81-2601, 81-2604(part).

Cross-References

Authorizations, Art. X, sec. 4, Mont. Const.; The Enabling Act, sec. 11 (see anno. vol. 1); 77-1-204.
Recreational use of streams, Title 23, ch. 2, part 3.
Powers and duties of Board, 77-1-202.

77-4-102. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Geothermal development" means any of the operations or facilities necessary for the production of geothermal resources.

(2) "Geothermal resources" means the natural heat energy of the earth, including the energy, in whatever form, which may be found in any position and at any depth below the surface of the earth, either present in, resulting from, created by, or which may be extracted from such natural heat and all minerals in solution or other products obtained from the material medium of any geothermal resource.

History: En. 81-2602 by Sec. 2, Ch. 111, L. 1974; R.C.M. 1947, 81-2602(part).

77-4-103. Rules. The board shall adopt rules governing the issuance of geothermal resource leases and the conduct of all geothermal operations. The board may also require the applicant for a geothermal lease to pay an application fee.

History: En. 81-2603 by Sec. 3, Ch. 111, L. 1974; R.C.M. 1947, 81-2603.

Cross-References

Promulgation of rules — Montana Administrative Procedure Act, Title 2, ch. 4.

77-4-104. Nature of geothermal resources. Geothermal resources are sui generis, being neither a mineral resource nor a water resource, but they are closely related to and possibly affecting and affected by water resources in many instances.

History: En. 81-2602 by Sec. 2, Ch. 111, L. 1974; R.C.M. 1947, 81-2602(part).

77-4-105. State retention of geothermal resources. No right to seek, obtain, or use geothermal resources has passed or shall pass with any existing or future lease of state or school lands.

History: En. 81-2602 by Sec. 2, Ch. 111, L. 1974; R.C.M. 1947, 81-2602(part).

77-4-106. Bonding requirements. The board may, at any time prior to the execution and delivery of a geothermal lease or at any time during the life of the lease, require a lessee to file with the department a bond to protect the rights of the state. The bond shall be in form and amount prescribed by the board. The board may at any time require new or additional bonds if the interests of the state will not adequately be protected by the bond previously filed.

History: En. 81-2606 by Sec. 6, Ch. 111, L. 1974; R.C.M. 1947, 81-2606.

Cross-References

Suretyship, Title 28, ch. 11, part 4.
Corporations as sureties, 33-26-101.

77-4-107. Compensation to surface lessee. The lessee of any geothermal lease shall compensate the surface lessee for any damage to the surface or leasehold interest caused as a result of the geothermal lease. The board may require the geothermal lessee to post a bond in an amount to be set by the board to insure the payment of damages to any surface lessee. If the surface lessee and the geothermal lessee disagree as to the reasonable amount of surface damage, damage shall be ascertained in the same manner as prescribed in 77-4-129.

History: En. 81-2607 by Sec. 7, Ch. 111, L. 1974; R.C.M. 1947, 81-2607.

77-4-108. Water rights in connection with geothermal development. If any geothermal development located on state land requires the utilization of water, the lessee may, at any time prior to 1 year before the expiration of the lease, make application to the board for permission to secure a water right to the land under the lease. The application must be in writing, show the permanency of the water supply, and give the estimated cost of utilizing the water resources. If the proposed plan meets with the approval of the board, permission must be granted to the lessee to secure the desired water right for the land. The right must be secured in accordance with Title 85, chapter 2, and must be filed in the name of the state. Existing water rights purchased by the geothermal lessee are the property of the lessee.

History: En. 81-2611 by Sec. 11, Ch. 111, L. 1974; R.C.M. 1947, 81-2611; amd. Sec. 2560, Ch. 56, L. 2009.

Cross-References

Water rights — generally, Title 85, ch. 2.

77-4-109. Conflicting leases. Where there are conflicting leases, including but not limited to geothermal, coal, mineral, and oil and gas leases, embracing the same land, the person who first was issued a lease shall be entitled to priority of rights; provided, however, that the exercise of this priority shall not interfere with actual production from the lease as determined by the board.

History: En. 81-2612 by Sec. 12, Ch. 111, L. 1974; R.C.M. 1947, 81-2612.

77-4-110 through 77-4-120 reserved.

77-4-121. Provisions of the lease. (1) A lease issued by the board gives the lessee, so long as the lessee complies with the terms and conditions of the lease, the exclusive right of possession of the lands or interests leased, subject to conditions contained in the lease.

(2) In a geothermal resource lease granted there is reserved to this state the right to sell, lease, or otherwise dispose of the surface of the lands covered by the lease subject to the rights and privileges granted the lessee under the terms of the lease.

(3) A lease must specify the rental and royalty to be paid, reasonable forfeiture provisions, and reasonable terms under which the lessee may, within a specified time, remove property placed on the leased lands upon the termination of the lease by forfeiture or by lapse of time.

(4) The lease may contain other provisions that the board and the lessee agree upon that are not inconsistent with this part.

History: En. 81-2604 by Sec. 4, Ch. 111, L. 1974; R.C.M. 1947, 81-2604(part); amd. Sec. 2561, Ch. 56, L. 2009.

77-4-122. Duration of lease. The term of each lease shall be for a primary term of 10 years and for so long thereafter as geothermal resources in paying quantities are produced, provided that all conditions and terms of the lease are fully performed by the lessee.

History: En. 81-2604 by Sec. 4, Ch. 111, L. 1974; R.C.M. 1947, 81-2604(part).

77-4-123. Extension of lease. If geothermal resources are not being produced from the leased premises at the expiration of the primary term of the lease but the owner of the lease is then engaged in drilling on the premises for geothermal resources, then the lease term shall be extended for so long as the drilling operations are diligently continued. If geothermal resources are recovered from any well drilled after the expiration of the primary term, the lease shall continue in force so long as geothermal resources in paying quantities are produced from the leased premises.

History: En. 81-2604 by Sec. 4, Ch. 111, L. 1974; R.C.M. 1947, 81-2604(part).

77-4-124. Operating agreements. Lessees may enter into agreements with other persons, associations, firms, and corporations for drilling and other operations on state lands, but no such operating agreements shall be binding upon the state until filed with the department and approved by the board. No drilling or operating agreement may affect the obligations of each individual leaseholder to the state.

History: En. 81-2604 by Sec. 4, Ch. 111, L. 1974; R.C.M. 1947, 81-2604(4).

77-4-125. Pooling agreements and unit operations. (1) Nothing contained in this part or other related laws shall prevent the board from entering into agreements for the pooling of acreage for unit operations for the production of geothermal resources and apportionment of geothermal royalties on an acreage or other equitable basis or from modifying the royalty provisions of existing leases and all subsequent leases in accordance with pooling agreements and unit plans of operation. No agreement may be entered into which changes the percentage of royalties to be paid to the state from the percentages fixed in its leases.

(2) Geothermal resources produced from any part of a unit in which state lands are included by virtue of a pooling agreement shall be considered to be produced from the state lands therein.

History: En. 81-2604 by Sec. 4, Ch. 111, L. 1974; R.C.M. 1947, 81-2604(5), (6).

77-4-126. Royalties and rentals. Geothermal leases shall be issued at an annual rental of not less than $1 per acre, payable in advance and/or a royalty which shall not be less than 10% of the amount or value of steam or other forms of heat or energy derived from the production under the lease and sold or utilized by the lessee or reasonably susceptible to sale or utilization by the lessee and not more than 5% of any byproduct derived from production under the lease and sold or utilized or reasonably susceptible of sale or utilization by the lessee.

History: En. 81-2605 by Sec. 5, Ch. 111, L. 1974; R.C.M. 1947, 81-2605.

77-4-127. Disposition of royalties and other receipts. (1) The department shall credit fees collected under geothermal leases to the general fund.

(2) All rentals, penalties, and bonuses shall be credited to the income fund of the grant to which the lands under each lease belong.

(3) All moneys collected as royalties shall be credited to the permanent fund arising from the grant to which the land under each particular lease belongs.

History: En. 81-2610 by Sec. 10, Ch. 111, L. 1974; R.C.M. 1947, 81-2610.

Cross-References
Public school fund — revenue, Art. X, sec. 2 and 5, Mont. Const.; 20-9-601.
Trust and agency fund types, 17-2-102.
Interest and income money, 20-9-341.
Portion of income to go to development of state lands, Title 77, ch. 1, part 6.

77-4-128. Permission for and disposition of improvements. (1) A geothermal lessee of state lands has the right to place upon the leased lands a reasonable amount of improvements, provided that the improvements are directly related to the purpose of the lease.

(2) Whenever another person becomes the geothermal lessee, the person shall pay the former lessee the reasonable value of the improvements at the time the new lessee takes possession of the improvements.

(3) In determining the value of these improvements, the original cost, the present condition, and the suitability of the improvements for the uses ordinarily made of geothermal resources must be considered.

(4) The former lessee may remove or dispose of the movable improvements from the land within 60 days from the expiration of the former lessee's lease except for the well casing and other equipment necessary for the preservation of any geothermal well. If not removed within 60 days, improvements become the property of the state unless the board grants additional time for the removal of the improvements. Before a lease is issued to the new lessee, the new lessee shall show that the new lessee has paid the former lessee the value of the improvements as agreed upon by them or as fixed and determined under 77-4-129, that the new lessee has offered to pay the value of the improvements as fixed and determined, or that the former lessee elects to remove the improvements.

History: En. 81-2608 by Sec. 8, Ch. 111, L. 1974; R.C.M. 1947, 81-2608; amd. Sec. 2562, Ch. 56, L. 2009.

77-4-129. Procedure to fix value of improvements. (1) If the owner of any improvements on state lands of the type authorized by law at the time they were placed on the land desires to sell these improvements to the new lessee and they are unable to agree on the value of the improvements, the value must be ascertained and fixed by three arbitrators, one of whom must be appointed by the owner of the improvements, one by the new lessee, and the third by the two arbitrators appointed. The reasonable compensation that the arbitrators may fix must be paid in equal shares by the owner of the improvements and the new lessee. The value of the improvements as ascertained and fixed is binding on both parties.

(2) If either party is dissatisfied with the valuation as fixed, the party may within 10 days appeal the arbitrators' decision to the department and the department shall examine the improvements and make the final decision as to the value of the improvements. The department shall apportion the actual cost of the reexamination to the owner and the new lessee as justice may require. The value of the improvements must be ascertained and fixed as provided in 77-4-128.

History: En. 81-2609 by Sec. 9, Ch. 111, L. 1974; R.C.M. 1947, 81-2609; amd. Sec. 2563, Ch. 56, L. 2009.

Part 2
Hydroelectric Resources

Part Cross-References
Educational impact statements, 20-1-208.
Rural cooperative utilities, Title 35, ch. 18.
Environmental policy, Title 75, ch. 1.
Major facility siting, Title 75, ch. 20.
Power generation negotiation process, 85-1-514.
Surface water and ground water, Title 85, ch. 2.
Environmental impact statement — water usage — fees, 85-2-124.
Water leasing program, 85-2-141.
Montana Dam Safety Act, Title 85, ch. 15.

77-4-201. Lease or license of power sites. It is unlawful to sell or advertise for sale state lands constituting power sites or part of power sites capable of developing hydroelectric energy in commercial quantities. However, the board may issue a lease or license to any person, corporation, or municipality for the development of power sites and the distribution, use, and disposition of the electrical energy generated on the sites as specifically provided in this chapter.

History: En. Sec. 2, Ch. 123, L. 1931; re-en. Sec. 1904.2, R.C.M. 1935; R.C.M. 1947, 81-1802; amd. Sec. 70, Ch. 7, L. 2001.

Cross-References

Leases authorized, Art. X, sec. 4, Mont. Const.; The Enabling Act, sec. 11 (see anno. vol. 1); 77-1-204.

77-4-202. Power site defined. The words "power site" as used in this part shall mean not only the state-owned land on which the dam is constructed, but also each separate tract of such land which will become part of the reservoir and which in and of itself makes an essential contribution to the value of the power site as a whole of not less than 5% of the entire value of such power site.

History: En. Sec. 1, Ch. 123, L. 1931; re-en. Sec. 1904.1, R.C.M. 1935; R.C.M. 1947, 81-1801.

77-4-203. Restrictions and regulations. In issuing any lease or license under the provisions of this part, the board shall have the power and it shall be its duty to incorporate in the lease or license such reasonable restrictions and regulations as it finds necessary in order to protect the interest of the state and its people.

History: En. Sec. 6, Ch. 123, L. 1931; re-en. Sec. 1904.6, R.C.M. 1935; R.C.M. 1947, 81-1806.

Cross-References

Powers and duties of Board, 77-1-202.

77-4-204. Examination of power sites. Whenever an application in writing has been presented to the board for lease or license on a power site on state lands, the board shall make such preliminary examination as to the value of the power site, as to the plans of development submitted by the applicant, and of all other matters relating to the proposed development as it deems necessary for the proper disposition of the business.

History: En. Sec. 3, Ch. 123, L. 1931; re-en. Sec. 1904.3, R.C.M. 1935; R.C.M. 1947, 81-1803(part).

77-4-205. Notice of proposed lease or license. If these preliminary investigations and the offer made for lease or license are such that the board deems further proceedings on the application to be justified, it shall cause notice of the proposed lease or license to be published not less than once each week during not less than 6 weeks previous to the meeting at which further consideration will be given to the application in two newspapers of general circulation throughout the state, one of such newspapers to be published in the neighborhood of the location of the power site.

History: En. Sec. 3, Ch. 123, L. 1931; re-en. Sec. 1904.3, R.C.M. 1935; R.C.M. 1947, 81-1803(part).

77-4-206. Meeting of board on proposed lease or license. (1) At this meeting all other applications which may have been received for lease or license to such power sites shall be duly considered together with the application originally filed.

(2) The board shall have the right to reject any or all bids.

(3) If, however, the board finds that any of the bids submitted offers to pay adequate rental for such power site, shows to the satisfaction of the board that it is capable of carrying out the proposed development and of rendering efficient service to the customers that will be served from such power development, and intends in good faith without any unnecessary delay to proceed with the development, then the board shall accept such bid. If more than one such acceptable bid is received, then the lease or license shall be awarded to the person, corporation, or municipality whose offer, considered in its totality, is the most advantageous to the state.

History: En. Sec. 3, Ch. 123, L. 1931; re-en. Sec. 1904.3, R.C.M. 1935; R.C.M. 1947, 81-1803(part).

Cross-References

Full market value required, Art. X, sec. 11, Mont. Const.

77-4-207. Preference to bid of municipality. In case one of the applicants is a municipality, its bid shall have preference provided that it is in all respects as advantageous to the state as the bid which has been submitted by any person or corporation.

History: En. Sec. 3, Ch. 123, L. 1931; re-en. Sec. 1904.3, R.C.M. 1935; R.C.M. 1947, 81-1803(part).

77-4-208. Rental for power sites — deposit of rental money in proper accounts. (1) The rental payment to the state for power sites must be paid annually or semiannually, and the rental may not be less than the full market value of the estate or interest disposed of through the granting of the lease or license. The value must be carefully ascertained from all available sources.

(2) Beginning July 1, 2011, all rental payments received under this section must be deposited in accordance with 17-3-1003(5).

History: En. Sec. 3, Ch. 123, L. 1931; re-en. Sec. 1904.3, R.C.M. 1935; R.C.M. 1947, 81-1803(part); amd. Sec. 18, Ch. 377, L. 2009; amd. Sec. 5, Ch. 371, L. 2011.

Cross-References

Public school fund — revenue, Art. X, sec. 2 and 5, Mont. Const.; 20-9-601.
Full market value required, Art. X, sec. 11, Mont. Const.
Trust and agency fund types, 17-2-102.
Interest and income money, 20-9-341.
Portion of income to go to development of state lands, Title 77, ch. 1, part 6.

77-4-209. Duration of lease. The term of the lease shall not exceed 50 years.

History: En. Sec. 3, Ch. 123, L. 1931; re-en. Sec. 1904.3, R.C.M. 1935; R.C.M. 1947, 81-1803(part).

Cross-References

Term not to exceed 50 years, The Enabling Act, sec. 11 (see anno. vol. 1).

77-4-210. Joint development with United States. (1) If the state land constituting a power site is part of a larger power site owned or controlled by the government of the United States, then the board may grant a joint lease or license with the United States for the development of the power site and the distribution, use, and disposition of the electrical energy generated at the power site under the laws of the United States and regulations issued pursuant to those laws.

(2) The lease or license may be granted for a term not exceeding 50 years.

(3) The share or percentage of ownership of the state in the joint power site must be in proportion to the total contribution that the lands of the state make to the value of the entire power site. Before the share of the state in the power site is advertised for lease or license, the percentage of the state's share in the entire power site must be calculated and agreed upon between the state and the United States.

(4) The fee or compensation to be paid to the state under the lease or license must be calculated on the basis of the state's share of ownership in the entire power site as calculated and agreed to. However, the fee or compensation may not be less than the full market value of the estate or interest disposed of in the lands through the granting of the lease or license to be carefully ascertained from all available sources.

(5) Before the lease or license is issued, notice of the lease or license must be given in the same manner as required in this chapter for the issuance of a separate lease or license by the state.

History: En. Sec. 4, Ch. 123, L. 1931; re-en. Sec. 1904.4, R.C.M. 1935; R.C.M. 1947, 81-1804; amd. Sec. 71, Ch. 7, L. 2001.

Cross-References

Full market value required, Art. X, sec. 11, Mont. Const.

77-4-211. Amortization of investment. (1) In all cases where the lease or license issued by the United States requires the amortization of the investment made in dams, machinery, equipment, and appurtenant works, such amortization requirement shall also apply to that portion of the investment representing the state's part or share in the power site so that the state will at all times retain its full share of ownership in the power site and in the dams, machinery, equipment, and appurtenant works.

(2) If the state lands constitute a separate power site wholly owned by the state and independently developed, the lease or license issued by the state may provide for the amortization of the capital invested in the dam, machinery, equipment, and appurtenant works, not including the distribution system, so that ultimately the state will become the owner of the power site including the dam, machinery, equipment, and appurtenant works, not including the distribution system.

History: En. Sec. 5, Ch. 123, L. 1931; re-en. Sec. 1904.5, R.C.M. 1935; R.C.M. 1947, 81-1805.

Part 3
Wind and Solar Resources

77-4-301. Wind and solar leases authorized. (1) The board may lease state lands for exploration, planning, development, and the production of energy from wind and solar resources.

(2) Leases for wind or solar rights only where no ground disturbance is authorized do not require reclassification.

(3) The board may exercise business discretion in entering leases under this part.

History: En. Sec. 2, Ch. 313, L. 2021.

77-4-302. Compensating surface lessee. (1) A person who leases wind or solar resources under this part shall compensate the surface lessee for damage to the surface improvements caused by the lease.

(2) (a) The board may require the wind or solar resource lessee to post a bond in an amount set by the board to insure the payment of damages to any surface lessee.

(b) If a surface lessee and a wind or solar resource lessee disagree on the reasonable amount of surface damage, compensation is determined in the manner prescribed by 77-4-129.

History: En. Sec. 3, Ch. 313, L. 2021.

77-4-303. Lease provisions. (1) A lessee under this part has exclusive rights of possession of the lands or interest leased, subject to conditions in the lease and compliance with the lease.

(2) The state reserves the right in leases under this part to sell, lease, or otherwise dispose of the surface, and the right to lease or exchange the subsurface, of the lands covered by the lease subject to the rights and privileges granted the lessee under the terms of the lease.

(3) A lease must specify the rental to be paid, duration, reasonable forfeiture provisions, bonding, and decommissioning terms.

(4) A lease may contain other provisions that the board and the lessee agree upon that are consistent with this part.

History: En. Sec. 4, Ch. 313, L. 2021.

77-4-304. Rental and disposition of rent and other receipts. (1) The rental payment to the state for a wind resource development lease may not be less than the full market value of the interest described in the approved lease.

(2) Rentals are credited to the income fund of the grant to which the lands under each lease belong.

History: En. Sec. 5, Ch. 313, L. 2021.

77-4-305. Rulemaking. The board may adopt rules governing the issuance of leases under this part.

History: En. Sec. 6, Ch. 313, L. 2021.

CHAPTER 5
TIMBER RESOURCES

Part 1 — State Forests

77-5-101. Classification of lands as state forests.
77-5-102. Designation of state forests.
77-5-103. Role of department.
77-5-104. Repealed.
77-5-105. Repealed.
77-5-106. Repealed.
77-5-107 through 77-5-114 reserved.
77-5-115. Repealed.
77-5-116. State forest lands — deferral of management prohibited.

Part 2 — Timber Sales and Removal

77-5-201. Sale of timber.
77-5-202. Agreement with purchaser — bond.
77-5-203. Breach of timber sale agreement.
77-5-204. Sale of timber — fee for forest improvement.
77-5-205. Approval or disapproval of sales.
77-5-206. Management of timber by department.
77-5-207. Salvage timber program.
77-5-208. Repealed.
77-5-209 and 77-5-210 reserved.
77-5-211. Repealed.
77-5-212. Commercial permits for timber sale.
77-5-213. Repealed.
77-5-214. Statement of policy.

77-5-215. Definitions.
77-5-216. Contract harvesting authorized.
77-5-217. Contract harvesting to address forest health concerns.
77-5-218. Rules.
77-5-219. Contract harvesting account — authorized expenditures — termination.
77-5-220 reserved.
77-5-221. Definition.
77-5-222. Determination of annual sustainable yield.
77-5-223. Annual sustainable yield as timber sale requirement.
77-5-224. Forest improvement account.

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77-5-301. Findings and purpose.
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77-5-304. Inspection — onsite consultation.
77-5-305. Responsibility for compliance — penalties — administrative orders.
77-5-306. Repealed.
77-5-307. Rulemaking.

Part 4 — Community and Urban Forestry Program

77-5-401. Title — purpose.
77-5-402. Definitions.
77-5-403. Authority — rulemaking.
77-5-404. Special revenue account — donations.

Part 1
State Forests

Part Cross-References

County forests, Title 7, ch. 8, part 26.

77-5-101. Classification of lands as state forests. All lands at present owned by the state and all that may hereafter be acquired by the state through escheat, exchange, purchase, grant, or devise which are principally valuable for the timber that is on them or for the growing of timber or for watershed protection are hereby classified and designated "state forests" and reserved for forest production and watershed protection.

History: En. Sec. 1, Ch. 179, L. 1925; re-en. Sec. 1830.1, R.C.M. 1935; amd. Sec. 1, Ch. 145, L. 1949; amd. Sec. 1, Ch. 167, L. 1951; amd. Sec. 97, Ch. 253, L. 1974; R.C.M. 1947, 81-1401.

Cross-References

Escheat — how disposed of, 72-14-206.

State to pay assessments on state lands within organized forest protection districts, 76-13-108.

77-5-102. Designation of state forests. The following state forest units are hereby established, primarily to secure through forestry management a continuous supply of timber and the performance of watershed covers:

(1) A state forest containing lands owned or hereafter acquired by the state, now comprising about 90,000 acres, situated in the watersheds of the Stillwater and Whitefish Rivers of Flathead and Lincoln Counties shall hereafter be known and designated as the "Stillwater State Forest".

(2) A state forest containing all lands owned or hereafter acquired by the state, now comprising about 42,000 acres, situated in the Swan River watershed of Lake County shall hereafter be known and designated as the "Swan River State Forest".

(3) A state forest containing all lands owned or hereafter acquired by the state, now comprising about 20,000 acres, situated in the Coal Creek watershed of the North Fork of the Flathead River shall hereafter be known and designated as the "Coal Creek State Forest".

(4) A state forest containing all lands owned or hereafter acquired by the state, now comprising about 10,000 acres situated in the watersheds of Camp and Cameron Creeks of Ross Hole of Ravalli County shall hereafter be known and designated as the "Sula State Forest".

(5) A state forest containing all lands owned or hereafter acquired by the state, now comprising about 14,628 acres, situated in the west half of township 25 north, range 26 west; and township 23 north, range 27 west; and west half of township 22 north, range 26 west; and township 21 north, range 26 west, except sections 4, 5, 6, 7, 8, and 18, in the Thompson River

watershed of Sanders County shall hereafter be known and designated as the "Thompson River State Forest".

(6) A state forest containing all lands owned or hereafter acquired by the state, now comprising about 18,076 acres, situated in townships 13, 14, and 15 north, range 14 west; and townships 13 and 16 north, range 15 west, Montana meridian, in the Clearwater River watershed of Missoula County shall hereafter be known and designated as the "Clearwater State Forest".

(7) A state forest containing all lands owned or hereafter acquired by the state, now comprising about 8,245 acres, situated in township 14 north, ranges 7, 8, and 9 west; and township 13 north, ranges 8 and 9 west, Montana meridian, of the Blackfoot River watershed in Lewis and Clark County shall hereafter be known and designated as the "Lincoln State Forest".

History: En. Sec. 2, Ch. 179, L. 1925; re-en. Sec. 1830.2, R.C.M. 1935; R.C.M. 1947, 81-1402.

77-5-103. Role of department. (1) The department shall, under the direction and control of the board, do all the field work in the selection, location, examination, appraisement, and reappraisement of state timberlands.

(2) The department shall do all acts required of it by the board, and under the direction of the board, it has general charge of the timberlands of the state.

(3) The department shall, under the supervision of the board:

(a) execute all matters pertaining to forestry within the jurisdiction of the state;

(b) direct the protection, improvement, and condition of state forests;

(c) take any action authorized by law to prevent and extinguish wildland fires; and

(d) enforce the laws pertaining to forest and nonforest lands and prosecute for any violation of those laws.

History: En. Sec. 10, Ch. 147, L. 1909; amd. Sec. 2, Ch. 118, L. 1911; re-en. Sec. 1831, R.C.M. 1921; re-en. Sec. 1831, R.C.M. 1935; amd. Sec. 1, Ch. 218, L. 1955; amd. Sec. 34, Ch. 93, L. 1969; amd. Sec. 102, Ch. 253, L. 1974; amd. Sec. 16, Ch. 397, L. 1977; R.C.M. 1947, 81-1411; amd. Sec. 1, Ch. 529, L. 1981; amd. Sec. 28, Ch. 336, L. 2007.

Cross-References

Timber resources — Department of Natural Resources and Conservation, Title 76, ch. 13.

Classification of forest lands by Department of Natural Resources and Conservation, 76-13-107.

Transportation of coniferous trees — Department authority, 76-13-601.

Department defined, 77-1-101.

Department of Commerce to locate and maintain information on prime forestry sites, 90-1-102.

77-5-104. Repealed. Sec. 30, Ch. 336, L. 2007.

History: En. Sec. 11, Ch. 147, L. 1909; re-en. Sec. 1833, R.C.M. 1921; re-en. Sec. 1833, R.C.M. 1935; amd. Sec. 1, Ch. 147, L. 1955; amd. Sec. 103, Ch. 253, L. 1974; amd. Sec. 17, Ch. 17, L. 1977; R.C.M. 1947, 81-1412; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 529, L. 1981; amd. Sec. 4, Ch. 286, L. 1985; amd. Sec. 10, Ch. 662, L. 1991; amd. Sec. 1, Ch. 310, L. 1993; amd. Sec. 324, Ch. 418, L. 1995.

77-5-105. Repealed. Sec. 30, Ch. 336, L. 2007.

History: (1)En. Sec. 12, Ch. 147, L. 1909; re-en. Sec. 1834, R.C.M. 1921; re-en. Sec. 1834, R.C.M. 1935; amd. Sec. 104, Ch. 253, L. 1974; Sec. 81-1413, R.C.M. 1947; (2)En. Sec. 13, Ch. 147, L. 1909; re-en. Sec. 1835, R.C.M. 1921; re-en. Sec. 1835, R.C.M. 1935; Sec. 81-1414, R.C.M. 1947; R.C.M. 1947, 81-1413(part), 81-1414.

77-5-106. Repealed. Sec. 30, Ch. 336, L. 2007.

History: En. Sec. 12, Ch. 147, L. 1909; re-en. Sec. 1834, R.C.M. 1921; re-en. Sec. 1834, R.C.M. 1935; amd. Sec. 104, Ch. 253, L. 1974; R.C.M. 1947, 81-1413(part).

77-5-107 through 77-5-114 reserved.

77-5-115. Repealed. Sec. 2, Ch. 182, L. 1999.

History: En. Sec. 1, Ch. 419, L. 1995.

77-5-116. State forest lands — deferral of management prohibited. The board and the department are prohibited from designating, treating, or disposing of any interest in state forest lands for the preservation or nonuse of these lands prior to obtaining funds for the affected beneficiary equal to the full market value of that designation, treatment, or disposition. Unless the full market value of the property interest or of the revenue foregone is obtained, the board and the department are prohibited from either temporarily or permanently designating, treating, or disposing of any interest in any state forest lands for the following purposes:

(1) as a natural area pursuant to Title 76, chapter 12, part 1, or as otherwise provided for by law;

(2) as open-space land as defined in 76-6-104;
(3) for old growth timber preservation; and
(4) as a wildlife management area.

History: En. Sec. 1, Ch. 259, L. 2001.

Part 2
Timber Sales and Removal

77-5-201. Sale of timber. (1) Under the direction of the board, the department may sell the timber crop and other crops of the forests after examination, estimate, appraisal, and report and under any rules established by the board. Timber or forest products sold from state trust lands may be sold by a stumpage method or a lump-sum method or marketed by the state through contract harvesting as provided in 77-5-214 through 77-5-219.

(2) Timber proposed for sale in excess of 500,000 board feet must be advertised in a paper of the county in which the timber is situated or on the department's website for a period of at least 30 days, during which time the department must receive sealed bids up to the hour of the closing of the bids, as specified in the notice of sale.

(3) (a) In cases of emergency because of fire, insect, fungus, parasite, or blowdown or to address forest health concerns or in cases when the department is required to act immediately to take advantage of access granted by permission of an adjoining landowner, timber proposed for sale not in excess of 1 million board feet may be advertised by invitation to bid for a period of not less than 10 days. The department may reject any bids, upon approval of the board, or it shall award the sale to the highest responsible bidder.

(b) (i) In cases when the department is required to act immediately to take advantage of access granted by permission of an adjoining landowner and there is only one potential buyer with legal access, the department may negotiate a sale of timber not in excess of 2 million board feet without offering the timber for bid if the sale is for fair market value.

(ii) The provisions of subsection (3)(b)(i) do not apply to situations when the only access is totally controlled by a potential purchaser of the timber, in which case the department shall seek to negotiate permanent, reciprocal access.

(c) In the situations described in subsections (3)(a) and (3)(b)(i), the department is not required to comply with the provisions of 75-1-201(1) to the extent that compliance is precluded by limited time available to take advantage of the sales opportunities described by this subsection (3).

History: En. Sec. 4, Ch. 179, L. 1925; re-en. Sec. 1830.4, R.C.M. 1935; amd. Sec. 98, Ch. 253, L. 1974; amd. Sec. 1, Ch. 301, L. 1977; R.C.M. 1947, 81-1404(part); amd. Sec. 1, Ch. 529, L. 1981; amd. Sec. 1, Ch. 139, L. 1983; amd. Sec. 1, Ch. 223, L. 1995; amd. Sec. 8, Ch. 494, L. 2007; amd. Sec. 1, Ch. 116, L. 2017; amd. Sec. 1, Ch. 82, L. 2019; amd. Sec. 1, Ch. 143, L. 2023.

Cross-References

Loggers' and logging camp cooks' liens, 71-3-601.
Declaration of insect infestation zone, 76-13-303.
Department defined, 77-1-101.
Permits without advertising, 77-5-212.

77-5-202. Agreement with purchaser — bond. (1) Upon award of sale the purchaser shall execute a formal agreement, approved by the board, which describes the area on which the timber is to be cut, the approximate quantity to be cut by species, and the rate for each product of each species. The agreement shall stipulate that all timber shall be paid for in advance of cutting, fix a date for termination of the agreement, and define rules of silviculture, cutting, utilization, scaling, and slash disposal and such other rules as in the discretion of the board are essential to the perpetuation of the state forests.

(2) (a) Except as provided in subsection (2)(b), as a guarantee for the faithful performance of the agreement, the purchaser shall be required to furnish a bond, with sufficient sureties, to the state of Montana, in an amount equal to the potential loss to the state, as determined by the department.

(b) The bond required under this section must be in an amount equal to at least 5% of the estimated value of the timber sold.

History: (1)En. Sec. 4, Ch. 179, L. 1925; re-en. Sec. 1830.4, R.C.M. 1935; amd. Sec. 98, Ch. 253, L. 1974; amd. Sec. 1, Ch. 301, L. 1977; Sec. 81-1404, R.C.M. 1947; (2)En. Sec. 5, Ch. 179, L. 1925; re-en. Sec. 1830.5, R.C.M. 1935; Sec. 81-1405, R.C.M. 1947; R.C.M. 1947, 81-1404(part), 81-1405; amd. Sec. 1, Ch. 373, L. 1989.

Cross-References

Suretyship, Title 28, ch. 11, part 4.
Surety bonds, 33-26-101.
Fire hazard reduction agreement and bond, 76-13-408.
Duty of purchaser to ensure compliance with fire hazard reduction, 76-13-409.

77-5-203. Breach of timber sale agreement. For breach of timber sale agreement, the department may suspend cutting or removal of the timber and take such steps as are advisable upon advice and counsel of the attorney general to adjust the breach or to liquidate the state's claim for damages or it may submit the case with full report as to damages sustained by the state to the attorney general for collection on the bond.

History: En. Sec. 6, Ch. 179, L. 1925; re-en. Sec. 1830.6, R.C.M. 1935; amd. Sec. 99, Ch. 253, L. 1974; R.C.M. 1947, 81-1406; amd. Sec. 1, Ch. 529, L. 1981.

Cross-References

Attorney General — member of Board of Land Commissioners, Art. X, sec. 4, Mont. Const.
Attorney General — duties, 2-15-501.
Department defined, 77-1-101.

77-5-204. Sale of timber — fee for forest improvement. (1) The board may sell timber on state lands or other forest products removed from state lands, as provided in 77-5-214 through 77-5-219, at a per-unit price when, in the board's judgment, it is in the best interest of the state, provided that live timber is not sold for less than full market value.

(2) Timber sold or cut from state lands must be cut and removed under rules that may be prescribed by the board for standing timber preservation and fire prevention. In all cases, the board shall require the person cutting the timber to pile and burn or otherwise dispose of the brush and slash in the manner that may be prescribed by the board.

(3) Before the sale of timber is granted, the value of the timber must be appraised under the direction of the department, upon the request and subject to the approval of the board. An appraisal must show as nearly as possible the per-unit value, when appropriate, of all merchantable forest products.

(4) In addition to the price of the forest products established under subsection (1), the board may require a timber or other forest product purchaser to pay a fee for forest improvement unless the timber is to be harvested from land granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329. Revenue from the fee must be deposited in the forest improvement account, established in 77-5-224, to the credit of the department and, as appropriated by the legislature, may be used only for:

(a) disposing of logging slash;

(b) acquiring access and maintaining roads necessary for timber harvesting on state lands;

(c) reforesting, thinning, and otherwise improving the condition and income potential of forested state lands; and

(d) complying with legal requirements for timber harvesting.

History: En. Sec. 3560, p. 193, L. 1897; re-en. Sec. 2213, Rev. C. 1907; amd. Sec. 53, Ch. 147, L. 1909; amd. Sec. 4, Ch. 118, L. 1911; amd. Sec. 1, Ch. 26, L. 1919; re-en. Sec. 1872, R.C.M. 1921; amd. Sec. 1, Ch. 132, L. 1933; re-en. Sec. 1872, R.C.M. 1935; amd. Sec. 219, Ch. 147, L. 1963; amd. Sec. 82, Ch. 428, L. 1973; R.C.M. 1947, 81-1601; amd. Sec. 1, Ch. 529, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 446, L. 1993; amd. Sec. 2, Ch. 157, L. 1995; amd. Sec. 11, Ch. 247, L. 2007; amd. Sec. 9, Ch. 494, L. 2007; amd. Sec. 21, Ch. 465, L. 2009.

Cross-References

Burning permits, 76-13-121.
Spark arresters required, 76-13-125.
Control of timber slash and debris, Title 76, ch. 13, part 4.

77-5-205. Approval or disapproval of sales. All sales of timber on state lands shall be subject to the approval and confirmation by the board, and no sale shall be deemed completed until after such approval and confirmation. The board shall have the power and it shall be its duty to disapprove any sale which in its opinion would be disadvantageous to the state.

History: En. Sec. 82, Ch. 60, L. 1927; re-en. Sec. 1805.82, R.C.M. 1935; R.C.M. 1947, 81-918(part).

77-5-206. Management of timber by department. (1) The department shall supervise all the management of timber before it is cut and secure the most complete utilization of all forest products consistent with the current forest management practices.

(2) It shall instruct and supervise the cruisers, forest wardens, and scalers in the conduct of their work and fix and establish the standard practice in timber sales administration.

(3) Records of converting factors, units of measure, and the scale of logs shall be kept as a permanent public record showing the date of scale or measurement, the designation of the scale, and the name of the scaler.

(4) Where the volume of timber involved is not in excess of 1 million board feet log scale, the department may designate each tree to be cut and make a tree scale measurement of all trees to be sold.

History: En. Sec. 8, Ch. 179, L. 1925; re-en. Sec. 1830.8, R.C.M. 1935; amd. Sec. 1, Ch. 40, L. 1945; amd. Sec. 1, Ch. 219, L. 1955; amd. Sec. 1, Ch. 145, L. 1963; amd. Sec. 100, Ch. 253, L. 1974; R.C.M. 1947, 81-1408; amd. Sec. 1, Ch. 529, L. 1981; amd. Sec. 1, Ch. 110, L. 1991.

Cross-References

Transportation of coniferous trees — Department authority, 76-13-601.
Department defined, 77-1-101.

77-5-207. Salvage timber program. (1) The department shall establish a salvage timber program that provides for the timely salvage logging on state forests of dead or dying timber or timber that is threatened by insects, disease, fire, or windthrow. In managing the harvest of salvage timber, the department shall consider:

(a) the economic value of the timber to be salvaged;

(b) the cost of salvage efforts; and

(c) the long-term costs to all forest resources from insects, disease, or fire that otherwise might be controlled through salvage operations.

(2) The department shall, to the extent practicable, harvest dead and dying timber before there is substantial wood decay and value loss.

(3) The department may sell salvage timber pursuant to this part.

(4) The department's salvage timber program may not take precedence over the timely sale and harvest of green timber.

History: En. Sec. 2, Ch. 285, L. 1993.

77-5-208. Repealed. Sec. 1, Ch. 407, L. 2019.

History: En. Sec. 1, Ch. 224, L. 1999.

77-5-209 and 77-5-210 reserved.

77-5-211. Repealed. Sec. 7, Ch. 270, L. 2001.

History: En. Sec. 7, Ch. 179, L. 1925; re-en. Sec. 1830.7, R.C.M. 1935; amd. Sec. 1, Ch. 217, L. 1955; R.C.M. 1947, 81-1407(part).

77-5-212. Commercial permits for timber sale. (1) Permits for quantities of 500,000 board feet or less may be issued to citizens of the state for commercial purposes, at commercial rates, without advertising, and under restrictions and rules that the board may approve for the sale of timber.

(2) To apply for a permit under this section, an individual shall:

(a) complete a permit application on a form provided by the department and submit the completed application to the department office that is responsible for management of the state land where the proposed sale is located;

(b) using ribbon, mark the area of the proposed sale; and

(c) designate on a U.S. geological survey map or other approved map the area proposed for sale and existing roads that would be used to remove timber from the site.

(3) For sales of less than 30,000 board feet, an individual shall provide proof of vehicle liability insurance and $1 million in commercial general liability insurance, naming the state of Montana as additionally insured, and shall provide a performance bond in an amount not to exceed $1,000.

(4) For sales of 30,000 board feet or more, an individual shall provide proof of vehicle liability insurance and $1 million in commercial general liability insurance, naming the state of Montana as additionally insured, and shall provide a performance bond in accordance with 77-5-202.

(5) Unless the timber proposed for sale is already sold or is part of another proposed sale being reviewed by the department, the department shall review completed permit applications within 30 days of the application's submittal. If the proposed sale complies with existing state and federal laws and regulations, the department shall perform an appraisal within 60 days of the application's submittal.

(6) The department shall issue a permit within 5 working days of the date that the applicant agrees to the terms of the proposed sale, unless the parties mutually agree upon a time extension.

(7) Repeated permits of this kind may not be issued to avoid advertising and the consequent competition secured by advertising.

(8) Permit applications for timber sales in cases of emergency due to fire, insect, fungus, parasite, or blowdown, and no other, are categorical exclusions as defined by rule, and the department is not required to comply with the provisions of 75-1-201(1) in reviewing those applications.

(9) Proposed timber sales under subsection (8) do not take precedence over the timely sale and harvest of green timber pursuant to 77-5-207.

(10) Permit applications made pursuant to this section may be subject to further environmental review, and the number of permits may be limited if the department determines that sales may have a cumulative effect on geographic area.

History: En. Sec. 7, Ch. 179, L. 1925; re-en. Sec. 1830.7, R.C.M. 1935; amd. Sec. 1, Ch. 217, L. 1955; R.C.M. 1947, 81-1407(part); amd. Sec. 1, Ch. 101, L. 2005; amd. Sec. 1, Ch. 108, L. 2009; amd. Sec. 2, Ch. 82, L. 2019.

Cross-References

Standard timber sales, 77-5-201.

77-5-213. Repealed. Sec. 8, Ch. 18, L. 1999.

History: En. Sec. 7, Ch. 179, L. 1925; re-en. Sec. 1830.7, R.C.M. 1935; amd. Sec. 1, Ch. 217, L. 1955; R.C.M. 1947, 81-1407(part).

77-5-214. Statement of policy. (1) The application of contract harvesting on Montana's trust lands provides an opportunity to improve forest health and long-term productivity, increase options for managing forests in environmentally sensitive areas, and provide potential revenue benefits for trust beneficiaries.

(2) It is important that the department has clear authorization and direction for conducting contract harvesting, including marketing and selling log sorts and other forest products.

(3) A clear funding mechanism addressing the receipt of revenue and payment for costs associated with contract harvesting projects provides the transparent process that allows beneficiaries to understand the costs and benefits associated with contract harvesting.

(4) Contract harvesting has the potential to result in increased bidder activity, better use and merchandising of products, improved harvesting results and environmental protection, and quicker completion of projects when time constraints are a factor.

History: En. Sec. 1, Ch. 494, L. 2007.

77-5-215. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Contract harvesting" means a timber harvest or timber sale occurring on state trust lands by which:

(a) the department solicits bids and contracts with a firm or individual awarded the bid to:

(i) perform all necessary work to harvest and process trees into merchantable forest products;

(ii) sort trees pursuant to contract specifications and department use standards; and

(iii) transport and deliver the products to forest product purchasers; and

(b) the department sells the forest products to one or more forest product purchasers through the competitive bidding process pursuant to 77-5-201(1) and (2).

(2) "Contract harvesting costs" means expenses related to the production of log sorts or other merchantable products from a stand of timber and the transportation of the products to point-of-sale locations. These expenses may include but are not limited to:

(a) sale preparation and development costs;

(b) marketing of forest products and administration of contract harvesting contracts;

(c) road building and maintenance;

(d) labor for felling, bucking, yarding, and loading;

(e) scaling of forest products; and

(f) the transportation of sorted logs and other merchantable products from the harvest site to a point of sale.

(3) "Decked" means a pile of logs or other merchantable forest products that have been prepared for sale or shipment and placed upon a landing.

(4) "Forest health concerns" means issues that can be addressed through management or harvest of merchantable or nonmerchantable trees and includes:

(a) forested lands that are overcrowded or stagnant and that are showing declining annual growth;

(b) wildland-urban interface areas where timber harvest or forest management is necessary to prevent catastrophic or other damage to forested lands, livestock, buildings, or other infrastructure;

(c) fire fuel buildup and treatment on forested lands;

(d) forested lands susceptible to imminent or repeated insect or disease attack and timber degradation;

(e) forested lands that are in a high state of decline or decay or are rapidly deteriorating;

(f) forested lands with high recreational use and high degradation risk; and

(g) forested lands under drought stress.

(5) "Forest products" means any product produced from the forest that the department can sell through competitive bid or direct negotiation.

(6) "Log sorts" means trees or portions of trees that are grouped and sorted into various product categories, including but not limited to pulp logs, sawlogs, and house logs.

(7) "Sawlogs" means merchantable timber prepared and sorted as decked, scaled logs and sold f.o.b., as defined in 30-2-319, at a designated location, expressed in terms of dollars per thousand board feet or dollars per ton.

(8) "Scaled" means the measured volume, weight, or other measurement of a log, load of logs, or other products.

(9) "Stumpage" means the value of timber as it exists, uncut, within a harvest unit, expressed in terms of dollars per thousand board feet, dollars per ton, or other appropriate value per-unit designation.

(10) (a) "Timber" means any wood growth on state trust land, mature or immature, alive or dead, standing or down, that is capable of furnishing merchantable raw material used in the manufacture of lumber or other forest products.

(b) The term does not include cultivated Christmas trees.

History: En. Sec. 2, Ch. 494, L. 2007.

77-5-216. Contract harvesting authorized. (1) Under direction of the board and after submitting the various portions of the sale for bid, as described in 77-5-201, the department is authorized to sell timber and forest products from contract harvesting sales through the competitive bidding process pursuant to 77-5-201(1) and (2) and to contract with firms and individuals for the removal of timber and forest products from state trust lands, the preparation of those materials into merchantable form, the transportation of those materials to a point of sale, and other purposes that the department determines to be necessary.

(2) Except as provided in subsection (3), the department may not conduct contract harvesting on state trust lands in an amount greater than 10% of the annual sustained yield.

(3) If the department is addressing forest health concerns as provided in 77-5-217, the department may exceed the annual sustained harvest level by up to 10% using contract harvesting, provided that the contract harvest volume in excess of the annual sustained harvest level contains no more than 25% merchantable sawlog volume.

History: En. Sec. 3, Ch. 494, L. 2007; amd. Sec. 1, Ch. 116, L. 2009.

77-5-217. Contract harvesting to address forest health concerns. All contract harvesting sales meant to address specific forest health concerns must be designed to:

(1) improve the overall health, productivity, and long-term revenue potential for the timber stand;

(2) be consistent with the state forest land management plan; and

(3) comply with all applicable state laws, rules, and regulations.

History: En. Sec. 4, Ch. 494, L. 2007.

77-5-218. Rules. (1) (a) The board may adopt rules to implement the contract harvesting program. The board shall evaluate each proposed contract harvest to determine if, in the board's judgment, contract harvesting will fulfill its duty to prudently obtain the maximum long-term revenue for the trust beneficiaries or to address forest health concerns or other environmental concerns.

(b) The board shall adopt rules describing the procedures necessary to ensure that the trust beneficiaries receive the full market value of the forest products.

(2) The board may adopt rules that impose specific appraisal requirements and sale procedures for any forest products directly marketed and sold by the department.

History: En. Sec. 5, Ch. 494, L. 2007.

77-5-219. Contract harvesting account — authorized expenditures — termination. (1) An account, called the contract harvesting account, must be created as a subaccount of the trust land administration account established in 77-1-108, in which to deposit gross revenue and for the payment of expenditures associated with contract harvesting sales. All proceeds of the sale of forest products from a contract harvesting sale must be deposited into this account and must be retained in the account to be used to pay for all contract harvesting costs, as provided in subsection (2).

(2) Expenditures may be credited against the account for contract harvesting costs. Personnel services costs for state employees may not be credited against the account.

(3) An amount equal to the contract harvesting costs must be retained in the account and must be deducted from the gross proceeds to determine the net proceeds. The net proceeds from the sale of the forest products must be distributed to the appropriate trust.

(4) An initial account balance must be created by transferring up to $500,000 into the contract harvesting account from the trust land administration account.

(5) If the contract harvesting program is terminated or discontinued for more than 10 years, any balance remaining in the contract harvesting account in excess of $500,000 must be distributed to the appropriate trust. The remaining balance up to $500,000 must be transferred back to the trust land administration account provided for in 77-1-108.

History: En. Sec. 6, Ch. 494, L. 2007; amd. Sec. 22, Ch. 465, L. 2009.

77-5-220 reserved.

77-5-221. Definition. As used in 77-5-222, 77-5-223, and this section, "annual sustainable yield" means the quantity of timber that can be harvested from forested state lands each year in accordance with all applicable state and federal laws, including but not limited to the laws pertaining to wildlife, recreation, and maintenance of watersheds, and in compliance with water quality standards that protect fisheries and aquatic life and that are adopted under the provisions of Title 75, chapter 5, taking into account the ability of state forests to generate replacement tree growth.

History: En. Sec. 1, Ch. 517, L. 1995.

77-5-222. Determination of annual sustainable yield. (1) (a) On July 1, 2013, the department, under the direction of the board, shall commission a new study by a qualified independent third party to determine, using scientific principles, the annual sustainable yield on forested state lands. The department shall direct the qualified independent third party to determine the yield pursuant to, but not exceeding, all state and federal laws.

(b) A new study may be commissioned by the department, under the direction of the board, at any time during the 10-year period provided for in subsection (2).

(2) A determination of annual sustainable yield under subsection (1) must be reviewed and redetermined by the department, under the direction of the board, at least once every 10 years.

History: En. Sec. 2, Ch. 517, L. 1995; amd. Sec. 1, Ch. 440, L. 2003; amd. Sec. 1, Ch. 288, L. 2013.

77-5-223. Annual sustainable yield as timber sale requirement. The annual sustainable yield constitutes the annual timber sale requirement for the state timber sale program administered by the department. This annual requirement may be reduced

proportionately by the amount of sustained income to the beneficiaries generated by site-specific alternate land uses approved by the board based on a determination under 77-5-222.

History: En. Sec. 3, Ch. 517, L. 1995; amd. Sec. 2, Ch. 288, L. 2013.

Cross-References

Revenue for state equalization aid, 20-9-343.

77-5-224. Forest improvement account. (1) There is a forest improvement account in the state special revenue fund.

(2) Forest improvement fees collected pursuant to 77-5-204 must be deposited in the forest improvement account and accounted for by trust.

(3) Funds in the forest improvement account must be invested. Any interest earned must be deposited in the forest improvement account in proportionate share to each fund's contribution to the account.

History: En. Sec. 24, Ch. 465, L. 2009.

Part 3
Streamside Management Zones

Part Cross-References

Water Use, Title 85.

77-5-301. Findings and purpose. (1) The legislature finds that the streamside management zone:

(a) acts as an effective sediment filter to maintain water quality;

(b) provides shade to regulate stream temperature;

(c) supports diverse and productive aquatic and terrestrial riparian habitats;

(d) protects the stream channel and banks;

(e) provides large, woody debris that is eventually recruited into a stream to maintain riffles, pools, and other elements of channel structure; and

(f) promotes flood plain stability.

(2) The legislature further finds that maintaining the integrity of forest streams is crucial to the quality and quantity of water available to Montanans for domestic, agricultural, industrial, and recreational use.

(3) The legislature further finds that forest streams are highly susceptible to impacts from land development and that in many cases forest practices in streamside zones in Montana are causing excessive and unnecessary damage to the banks, beds, and protective vegetation of forest streams.

(4) The legislature further finds that, through careful management in the streamside zone, owners and operators can achieve timber harvest goals without sacrificing water quality or impairing the beneficial uses of the water.

(5) The purposes of this part are:

(a) to protect the legitimate public interest in the quality and quantity of forest waters;

(b) to provide for standards, oversight, rehabilitation, and penalties to ensure that forest practices are conducted in a manner that conserves the integrity of Montana's streamside zones;

(c) to provide guidelines for the management of wildlife habitat in streamside zones; and

(d) to allow operators necessary flexibility to use practices appropriate to site-specific conditions in the streamside management zone.

History: En. Sec. 1, Ch. 608, L. 1991.

77-5-302. Definitions. As used in this part, the following definitions apply:

(1) "Alternative practices" means forest practices that are:

(a) conducted in the streamside management zone and that are different from practices required by rules adopted under this part;

(b) designed for site-specific conditions encountered during a timber sale; and

(c) subject to department approval under 77-5-303.

(2) "Department" means the department of natural resources and conservation provided for in 2-15-3301.

(3) "Forest practices" means, within a timber sale, the harvesting of trees, road construction or reconstruction associated with harvesting and accessing trees, site preparation

for regeneration of a timber stand, reforestation, and management of logging slash. The term does not include activities related to the operation of a Christmas tree farm or nursery that do not involve new road construction.

(4) "Operator" means a person responsible for conducting forest practices. An operator may be the owner or a person who, through contractual agreement with the owner, is obligated to or entitled to conduct forest practices or carry out a timber sale.

(5) "Owner" means an individual, firm, partnership, corporation, or association of any nature that holds an ownership interest in forest land or timber.

(6) "Person" means an individual, firm, partnership, company, commercial entity, corporation, or association.

(7) "Stream" means a natural watercourse of perceptible extent that has a generally sandy or rocky bottom or definite banks and that confines and conducts continuously or intermittently flowing water.

(8) "Streamside management zone" or "zone" means a stream, lake, or other body of water and an adjacent area of varying width where management practices that might affect wildlife habitat or water quality, fish, or other aquatic resources need to be modified. The streamside management zone encompasses a strip at least 50 feet wide on each side of a stream, lake, or other body of water, measured from the ordinary high-water mark, and extends beyond the high-water mark to include wetlands and areas that provide additional protection in zones with steep slopes or erosive soils.

(9) "Timber sale" means a series of forest practices designed to access, harvest, or regenerate trees on a defined land area for commercial purposes.

History: En. Sec. 2, Ch. 608, L. 1991; amd. Sec. 1, Ch. 320, L. 1993; amd. Sec. 325, Ch. 418, L. 1995.

77-5-303. Standards for forest practices in streamside management zones. (1) The following practices are prohibited in a streamside management zone:

(a) broadcast burning;

(b) the operation of wheeled or tracked vehicles except on established roads;

(c) the forest practice of clearcutting;

(d) the construction of roads except when necessary to cross a stream or wetland;

(e) the handling, storage, application, or disposal of hazardous or toxic materials in a manner that pollutes streams, lakes, or wetlands or that may cause damage or injury to humans, land, animals, or plants;

(f) the side-casting of road material into a stream, wetland, or watercourse; and

(g) the deposit of slash in streams or other water bodies.

(2) The department shall publish and distribute the rules implementing the streamside management standards.

History: En. Sec. 3, Ch. 608, L. 1991.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.
Water quality, Title 75, ch. 5.
Aquatic ecosystem protections, Title 75, ch. 7.
Waste and litter control, Title 75, ch. 10.

77-5-304. Inspection — onsite consultation. (1) The department may inspect forest practices on any federal, state, or private land in this state to assess compliance with the provisions of this part and rules adopted pursuant to this part.

(2) The department may conduct an onsite consultation with an owner or operator to review harvest plans and watershed conditions. During the onsite consultation, the department may review and, if appropriate, approve the proposed use of alternative streamside management practices, as provided in 77-5-303.

History: En. Sec. 4, Ch. 608, L. 1991.

77-5-305. Responsibility for compliance — penalties — administrative orders. (1) (a) Except as provided in subsection (1)(b), it is the responsibility of the owner to ensure compliance with the provisions of this part and rules adopted pursuant to this part.

(b) If a written contract between an owner and an operator specifies that the operator is responsible for compliance with laws relating to forest practices, the operator is considered the responsible party for all enforcement actions taken by the department under this section.

(2) A person who violates a provision of this part, a rule adopted pursuant to this part, or an order issued under this section shall be subject to a civil penalty not to exceed $1,000. Each day of violation constitutes a separate violation.

(3) (a) When the department determines that an owner or operator has violated a provision of this part or a rule adopted pursuant to this part and has caused damage to watershed or wildlife resources, the department may serve an order requiring the person responsible for the conduct of forest practices to undertake necessary site rehabilitation within a reasonable period of time stated in the order. The order must specify the nature of the violation and the damage or unsatisfactory condition resulting from the violation.

(b) The order becomes final unless, within 30 days after the notice is served, the person named requests in writing a hearing before the department. On receipt of the request, the department shall schedule a hearing. Service by mail is complete on the date of mailing.

(c) If, after a hearing, the department finds that a violation has occurred and the watershed or wildlife habitat damage warrants site rehabilitation, it shall affirm or modify the order previously issued. If the department finds that a violation has not occurred or that site rehabilitation is not warranted, it shall rescind the order.

(d) The department may include in an order a provision that the owner or operator immediately cease causing further damage and take immediate action to alleviate the damage or to prevent future damage. The department may institute an action for injunctive relief under Title 27, chapter 19, if the recipient of the order does not comply with it.

(4) Subsection (3) does not prevent the department from seeking voluntary compliance and site rehabilitation through warning, conference, or any other appropriate means.

(5) All fines and penalties levied under this section must be deposited in the state general fund.

History: **En. Sec. 5, Ch. 608, L. 1991; amd. Sec. 60, Ch. 422, L. 1997.**

77-5-306. Repealed. Sec. 66, Ch. 422, L. 1997.

History: **En. Sec. 6, Ch. 608, L. 1991.**

77-5-307. Rulemaking. The department shall adopt rules:

(1) implementing each of the management standards provided in 77-5-303;

(2) providing specific direction necessary for owners and operators to understand and comply with the management standards, including additional definition of the streamside management zone and the forest practices permissible within the zone;

(3) providing alternative practices for the standards provided for in 77-5-303; and

(4) regulating the harvest of timber in streamside management zones.

History: **En. Sec. 7, Ch. 608, L. 1991.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 4
Community and Urban Forestry Program

Part Cross-References

County Board of Park Commissioners, Title 7, ch. 16, part 23.

Municipal authority for planting and protection of trees, 7-16-4102.

77-5-401. Title — purpose. This part may be cited as the "Community and Urban Forestry Act". The purpose of the act is to:

(1) encourage the planting, maintenance, and management of trees in municipalities and counties;

(2) maximize the potential of trees and vegetative cover in improving the quality of the environment;

(3) encourage the coordination of state and local agency activities and maximize citizen participation in the development and implementation of community and urban forestry-related programs;

(4) foster healthy economic activity for the state's community and urban forestry-related businesses through cooperative and supportive contracts with the private business sector;

(5) facilitate the creation of jobs related to community and urban forestry activities, including opportunities for retraining and employing displaced timber resource workers; and

(6) provide meaningful voluntary opportunities for the state's citizens and organizations interested in community and urban forestry activities.

History: En. Sec. 1, Ch. 321, L. 1993.

77-5-402. Definitions. As used in this part, the following definitions apply:

(1) "Community and urban forestry" means the planning, establishment, protection, care, and management of trees and associated plants individually, in small groups, or under forest conditions within municipalities and counties.

(2) "Department" means the department of natural resources and conservation provided for in 2-15-3301.

(3) "Local government" means a city, town, county, consolidated city-county, or other political subdivision of the state.

History: En. Sec. 2, Ch. 321, L. 1993; amd. Sec. 326, Ch. 418, L. 1995.

77-5-403. Authority — rulemaking. (1) The department may establish and maintain a program in community and urban forestry to accomplish the purpose set forth in 77-5-401. The department may assist local governments in establishing and maintaining community and urban forestry programs and in encouraging persons to engage in appropriate and improved tree management and care.

(2) The department may advise, encourage, and assist local governments in the development and coordination of policies, programs, and activities for the promotion of community and urban forestry.

(3) The department may appoint an advisory committee to assist the department in establishing and carrying out a program in community and urban forestry.

(4) The department may adopt rules to implement this part.

History: En. Sec. 3, Ch. 321, L. 1993.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

77-5-404. Special revenue account — donations. (1) There is an account in the state special revenue fund. The department shall deposit in the account money received from gifts, grants, bequests, or endowments from public or private sources, and the funds must be used to carry out the provisions of this part. The money in the account may be spent in accordance with a legislative appropriation.

(2) The department may accept donations of labor, material, seedlings, and equipment from public or private sources for the purpose of carrying out the provisions of this part.

History: En. Sec. 4, Ch. 321, L. 1993.

CHAPTER 6
AGRICULTURAL, GRAZING, AND OTHER SURFACE LEASES

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77-6-101. Statement of policy. It is hereby declared to be the policy of the state, that in the interest of accomplishing a sustained income for the school and other trust funds to be derived from land grant and other state lands, agricultural and grazing lands and town and city lots shall be appraised from time to time but not less than once during the term of every lease by competent appraisers. The purpose of such appraisals shall be to determine the rental value of agricultural lands and town and city lots, the general condition of the lands, and the carrying capacity of grazing lands.

History: En. Sec. 1, Ch. 207, L. 1945; amd. Sec. 1, Ch. 260, L. 1963; R.C.M. 1947, 81-401.

Cross-References
Market value for interest in state lands, Art. X, sec. 11, Mont. Const.
Appraisal of grazing land, 77-6-201.

77-6-102. Surface leases authorized. Under the general direction and control of the board, the department shall lease all agricultural and grazing lands and all town lots, city lots, and lands valuable for commercial development open to leasing upon proper application.

History: En. Sec. 20, Ch. 60, L. 1927; re-en. Sec. 1805.20, R.C.M. 1935; amd. Sec. 2, Ch. 207, L. 1945; amd. Sec. 1, Ch. 254, L. 1947; amd. Sec. 2, Ch. 201, L. 1949; amd. Sec. 2, Ch. 260, L. 1963; amd. Sec. 2, Ch. 257, L. 1965; amd. Sec. 10, Ch. 428, L. 1973; amd. Sec. 1, Ch. 134, L. 1974; amd. Sec. 2, Ch. 135, L. 1974; R.C.M. 1947, 81-402(part); amd. Sec. 2, Ch. 488, L. 1985.

Cross-References

Authorization, Art. X, sec. 4, Mont. Const.; The Enabling Act, sec. 11 (see anno. vol. 1); 77-1-204.

77-6-103. Lease of state land to United States for military purposes authorized. The board, when it considers it in the public interest, may lease to the United States for military purposes any state land, whether such land was received by the state through federal land grants or whether such land consists of so-called "mortgage lands", on such terms and conditions as it considers necessary to promote the public welfare and protect the interests of the state. Rental shall be payable at the end of each year of the lease.

History: En. Sec. 1, Ch. 122, L. 1943; amd. Sec. 25, Ch. 428, L. 1973; R.C.M. 1947, 81-424.

77-6-104. Renumbered 77-1-209. Code Commissioner, 1983.

77-6-105. Criteria for determining land to be included in single lease. (1) All lands shall be leased in as compact bodies as possible, and care shall be taken not to separate parts of any section from the section lines or public highways or from any available water supply or in a form that will make it more difficult to lease the remaining state lands in the section in which they are located.

(2) There may be included under one lease tracts of lands embracing more than one section.

History: (1)En. Sec. 27, Ch. 60, L. 1927; re-en. Sec. 1805.27, R.C.M. 1935; amd. Sec. 3, Ch. 257, L. 1965; amd. Sec. 16, Ch. 428, L. 1973; Sec. 81-413, R.C.M. 1947; (2)En. Sec. 23, Ch. 60, L. 1927; amd. Sec. 2, Ch. 42, L. 1933; re-en. Sec. 1805.23, R.C.M. 1935; amd. Sec. 2, Ch. 65, L. 1939; amd. Sec. 5, Ch. 260, L. 1963; amd. Sec. 18, Ch. 240, L. 1971; amd. Sec. 30, Ch. 94, L. 1973; amd. Sec. 14, Ch. 428, L. 1973; amd. Sec. 3, Ch. 135, L. 1974; Sec. 81-407, R.C.M. 1947; R.C.M. 1947, 81-407(part), 81-413(part).

77-6-106. Repealed. Sec. 6, Ch. 488, L. 1985.

History: En. Sec. 20, Ch. 60, L. 1927; re-en. Sec. 1805.20, R.C.M. 1935; amd. Sec. 2, Ch. 207, L. 1945; amd. Sec. 1, Ch. 254, L. 1947; amd. Sec. 2, Ch. 201, L. 1949; amd. Sec. 2, Ch. 260, L. 1963; amd. Sec. 2, Ch. 257, L. 1965; amd. Sec. 10, Ch. 428, L. 1973; amd. Sec. 1, Ch. 134, L. 1974; amd. Sec. 2, Ch. 135, L. 1974; R.C.M. 1947, 81-402(4).

77-6-107. Leases of land wanted for both agricultural and grazing use. If there are applications or bids for renting certain land for grazing purposes and also applications or bids for renting the same land for agricultural purposes, an inspection of the land shall be made by the department at the earliest practical opportunity and a determination made, based on its findings, of the highest and best use which can be made of the land or portions thereof. Any lease of the land subsequent to the applications or bids shall be such as to return to the state revenue commensurate with the highest and best use.

History: En. Sec. 27, Ch. 60, L. 1927; re-en. Sec. 1805.27, R.C.M. 1935; amd. Sec. 3, Ch. 257, L. 1965; amd. Sec. 16, Ch. 428, L. 1973; R.C.M. 1947, 81-413(part).

77-6-108. Who may lease. A person may not lease state lands, except one who is the head of a family, unless the person has attained 18 years of age. An eligible person and an association, company, or corporation authorized to hold lands under lease may lease state lands and may hold more than one lease to state lands.

History: En. Sec. 23, Ch. 60, L. 1927; amd. Sec. 2, Ch. 42, L. 1933; re-en. Sec. 1805.23, R.C.M. 1935; amd. Sec. 2, Ch. 65, L. 1939; amd. Sec. 5, Ch. 260, L. 1963; amd. Sec. 18, Ch. 240, L. 1971; amd. Sec. 30, Ch. 94, L. 1973; amd. Sec. 14, Ch. 428, L. 1973; amd. Sec. 3, Ch. 135, L. 1974; R.C.M. 1947, 81-407(part); amd. Sec. 2564, Ch. 56, L. 2009.

77-6-109. Duration of agricultural or grazing lease. Except as provided in 77-6-116, a lease for agricultural or grazing lands may not be for a period other than 5 or 10 years.

History: En. Sec. 23, Ch. 60, L. 1927; amd. Sec. 2, Ch. 42, L. 1933; re-en. Sec. 1805.23, R.C.M. 1935; amd. Sec. 2, Ch. 65, L. 1939; amd. Sec. 5, Ch. 260, L. 1963; amd. Sec. 18, Ch. 240, L. 1971; amd. Sec. 30, Ch. 94, L. 1973; amd. Sec. 14, Ch. 428, L. 1973; amd. Sec. 3, Ch. 135, L. 1974; R.C.M. 1947, 81-407(part); amd. Sec. 3, Ch. 488, L. 1985; amd. Sec. 2, Ch. 555, L. 1989; amd. Sec. 15, Ch. 404, L. 2003.

Cross-References

Grazing and agricultural leases not to exceed 10 years, The Enabling Act, sec. 11 (see anno. vol. 1).

77-6-110. Lease expiration dates. Except as provided in 77-6-116, all leases for agricultural lands, grazing lands issued after February 27, 1939, no matter on what date issued, shall expire on February 28 within 10 years from the date on which the lease becomes effective.

History: En. Sec. 24, Ch. 60, L. 1927; re-en. Sec. 1805.24, R.C.M. 1935; amd. Sec. 3, Ch. 65, L. 1939; amd. Sec. 4, Ch. 135, L. 1974; R.C.M. 1947, 81-408; amd. Sec. 3, Ch. 555, L. 1989.

77-6-111. Terminated. Sec. 2, Ch. 304, L. 1977.

History: En. 81-407.1 by Sec. 1, Ch. 304, L. 1977; R.C.M. 1947, 81-407.1.

77-6-112. Liens on crops and improvements. (1) The state has a lien upon all crops growing upon any of its land and upon the crops after they have been separated from the land for any rentals and penalties due or delinquent under the lease on the land or becoming due during the calendar year in which the crops are harvested, for any year or part of a year that the land has been held or used by the lessee. This lien applies to all buildings, structures, fences, and other improvements and is prior and superior to all other liens, except thresher's liens and seed liens specified in 71-3-701 and 71-3-801, which have priority, but only for the aggregate amount of the indebtedness then existing, including any advances made, interest due and other charges as evidenced by the original loan-contract, and indebtedness accumulating, exclusive of any other future advances originally contemplated.

(2) Any person acquiring any of these crops or improvements takes them subject to this lien. The department or the sheriff of the county in which the land is located may demand of the lessee payment of the amounts due the state, and if they are not paid upon demand, the officer making the demand or the department may seize and sell, either at a private or public sale, upon giving notice for not less than 3 days of the sale, sufficient of those crops or improvements, or of both, to pay the amounts due the state, together with costs and expenses of seizure and sale. These provisions relating to liens on crops and improvements must be embodied in all leases for agricultural and grazing lands and for town, city, or other lots.

History: En. Sec. 31, Ch. 60, L. 1927; re-en. Sec. 1805.31, R.C.M. 1935; amd. Sec. 20, Ch. 428, L. 1973; R.C.M. 1947, 81-418; amd. Sec. 2565, Ch. 56, L. 2009.

Cross-References

Liens — generally, Title 71, ch. 3.
Farm laborers' liens, Title 71, ch. 3, part 4.
Construction liens, Title 71, ch. 3, part 5.
Lien for hail insurance, 71-3-711.
Fertilizer and pesticide liens, Title 71, ch. 3, part 9.

77-6-113. Lease conditions — cancellation. (1) It is a condition of all leases of agricultural or grazing state lands that:

(a) in the case of agricultural lands, the lessee shall observe the ordinary rules for good management of agricultural lands and shall handle the leased land with the view of maintaining its productivity and minimizing wind and soil erosion and noxious weeds and planting crops with a view of securing the greatest yields of good quality; and

(b) in the case of grazing lands, the lessee shall observe the ordinary rules for good range management and shall manipulate the numbers, class, distribution, and season of the range use and the handling, feeding, breeding, and marketing of grazing livestock with a view of securing the production of the maximum of livestock and livestock products, consistent with the conservation of the land resources and the perpetuation of its productivity, and to these ends the state land lease may not be abused by overgrazing.

(2) For the gross violation of any of these rules, the lease involved must be canceled by the department, subject to the appeal procedure provided in 77-6-211.

(3) This section may not be construed to interfere with the right of the owner of property adjacent to a navigable river or stream to control noxious weeds on the land adjacent to the navigable river or stream.

History: En. Sec. 10, Ch. 207, L. 1945; amd. Sec. 4, Ch. 254, L. 1947; amd. Sec. 3, Ch. 27, L. 1971; amd. Sec. 18, Ch. 428, L. 1973; R.C.M. 1947, 81-415; amd. Sec. 12, Ch. 472, L. 2009.

Cross-References

Renewal leases, 77-6-205.
Effect of competitive bidding, 77-6-508.

77-6-114. Repealed. Sec. 5, Ch. 313, L. 2007.

History: En. Sec. 11, Ch. 195, L. 1939; amd. Sec. 3, Ch. 90, L. 1941; amd. Sec. 3, Ch. 228, L. 1947; R.C.M. 1947, 16-1715(part); amd. Sec. 30, Ch. 607, L. 1985; amd. Sec. 124, Ch. 114, L. 2003.

77-6-115. Acquisition of water right by lessee — limitation. (1) Subject to subsection (4), the lessee of state lands may at any time prior to 1 year before the expiration of the lease make application to the board for permission to secure a water right to the land under the lease. The application must be in writing and must show how much of the land can be irrigated, the permanency of the water supply, and the probable cost of placing the land under irrigation. If the proposed plan meets with the approval of the board, permission must be granted the lessee to secure the desired water right for the land and to place the land under irrigation.

(2) Subject to subsection (4), if the water right becomes a permanent and valuable improvement, then in case of the sale or lease of the land to other parties, the former lessee is entitled to receive compensation in the amount of the reasonable value of the water right, as in the case of other improvements, from the new lessee or the purchaser.

(3) These provisions may not be construed to make the state liable to the lessee for the payment of the cost or value of the irrigation improvements.

(4) A water right acquired under this section may not interfere with a water right used in conjunction with a structure described in 77-1-134.

History: En. Sec. 33, Ch. 60, L. 1927; re-en. Sec. 1805.33, R.C.M. 1935; R.C.M. 1947, 81-420; amd. Sec. 2566, Ch. 56, L. 2009; amd. Sec. 13, Ch. 472, L. 2009.

Cross-References

Compensation for improvements, Title 77, ch. 6, part 3.
Water rights — generally, Title 85, ch. 2.

77-6-116. Voluntary termination of lease to allow concurrence with federal conservation reserve program — competitive bidding required. (1) A lessee of state land who wishes to enter the state land in the federal conservation reserve program may request voluntary termination of the remainder of the lease prior to scheduled expiration in order to seek a renewal lease that will run concurrently with the federal program. The lessee shall apply for voluntary termination to the department on a form prescribed by the department. The form must specify:

(a) the name of the lessee and a designation of the leased land for which voluntary termination is sought;

(b) the scheduled termination date of the lease; and

(c) the term of eligibility of the land under the federal conservation reserve program.

(2) Upon receipt of a proper application, the department shall terminate the remainder of the lease. When a request for voluntary termination is granted, the department shall fulfill the notification requirements of 77-6-204, and the lease is subject to the same competitive bidding process as renewal leases under 77-6-205. However, the lessee requesting voluntary termination retains the preference right allowed under 77-6-205.

(3) If a lease renewal is granted pursuant to 77-6-205 to a lessee who has requested voluntary termination under this section, the term of the renewal lease must coincide with the term of eligibility under the federal conservation reserve program.

History: En. Sec. 1, Ch. 555, L. 1989.

Part 2
Leasing Procedure

77-6-201. Appraisal of grazing lands. (1) The department shall appraise the grazing lands owned by the state as to their animal-unit-month carrying capacity and make and preserve records of carrying capacity in its office and from time to time reexamine these lands as to their animal-unit-month carrying capacity in order to keep the records in its office reasonably accurate.

(2) In appraising these grazing lands, the following factors must be taken into consideration:

(a) inventory of the forage resources, including kind, amount, and location of vegetation;

(b) accessibility and usability of this forage resource as influenced by topography, availability of stock water, and season of usability;

(c) condition of soils, including the erosion situation;

(d) other and related resources such as timber, game animals, and need for watershed protection;

(e) record of needed improvements and facilities, including fuel and stock water, revegetation, rodent control, trails, fences, and the like;

(f) pertinent facts and figures submitted by stockgrowers living in the area and directors of state grazing districts including the land or in its vicinity;

(g) carrying capacity set for similar land in a state grazing district in which the land is situated.

History: En. Sec. 4, Ch. 207, L. 1945; amd. Sec. 11, Ch. 428, L. 1973; R.C.M. 1947, 81-404; amd. Sec. 2567, Ch. 56, L. 2009.

Cross-References

Persons entitled to examine and copy public records, 2-6-1003.
Annual grazing rental based on "animal units", 77-6-507.

77-6-202. Lease by competitive bidding — full market value required. When the department receives an application to lease an unleased tract, it shall advertise for bids on the tract. The tract must be leased to the highest bidder unless the board determines that the bid is not in the state's best interest for the reasons set forth in 77-6-205(2). The board may not accept a bid that is below full market value. If the high bid is rejected, the board shall set forth the reasons for the rejection in writing. The lease may be issued, at a rental rate to be determined by the board, to the first bidder who is willing to pay the board-determined rate whose name is selected through a random selection process from all bidders on the tract.

History: En. Sec. 21, Ch. 60, L. 1927; re-en. Sec. 1805.21, R.C.M. 1935; amd. Sec. 1, Ch. 65, L. 1939; amd. Sec. 1, Ch. 20, L. 1941; amd. Sec. 5, Ch. 207, L. 1945; amd. Sec. 3, Ch. 260, L. 1963; amd. Sec. 12, Ch. 428, L. 1973; amd. Sec. 1, Ch. 311, L. 1977; R.C.M. 1947, 81-405(3); amd. Sec. 3, Ch. 586, L. 1993; amd. Sec. 288, Ch. 42, L. 1997.

Cross-References

Effect of competitive bidding, 77-6-508.

77-6-203. Bid deposit. (1) A person bidding for the lease of state lands shall deposit with the department, as evidence of good faith, a certified check, cashier's check, or money order in an amount equal to 100% of the annual rental bid in the case of grazing land and an amount equal to $20 per acre for each acre of agricultural land contained in the lease in the case of agricultural land.

(2) The department shall retain the deposit of the successful bidder, apply it on the rental for the first year of the lease only, and return any balance of the deposit at the end of the first year to the successful bidder. The department shall return the deposits of the unsuccessful bona fide bidders. If the department finds a bid has been submitted that is frivolous, forged, or a bad faith bid or a bid submitted for purposes of harassment, the deposit is forfeited. The department shall make a reasonable attempt to notify the bidder in writing of the forfeiture and the reasons for it.

(3) If the successful bidder fails to execute the lease for any reason, the deposit is forfeited.

(4) The department shall credit all forfeited deposits to the interest and income account of the proper trust.

History: En. Sec. 1, Ch. 185, L. 1963; amd. Sec. 29, Ch. 428, L. 1973; amd. Sec. 1, Ch. 133, L. 1974; R.C.M. 1947, 81-436; amd. Sec. 37, Ch. 281, L. 1983; amd. Sec. 1, Ch. 290, L. 1985; amd. Sec. 1, Ch. 89, L. 2005; amd. Sec. 1, Ch. 32, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 32, L. 2025. Amendment effective October 1, 2025.

Cross-References

Public school fund — revenue, Art. X, sec. 2 and 5, Mont. Const.; 20-9-601.
Trust and agency fund types, 17-2-102.
Interest and income money, 20-9-341.
Portion of income to go to development of state lands, Title 77, ch. 1, part 6.

77-6-204. Notification of termination of lease. When a lease expires, is canceled, or is voluntarily terminated under 77-6-116, the department shall immediately notify the holder of the lease and all persons who have expressed an interest in leasing the land during or immediately preceding the term of the expired, canceled, or terminated lease.

History: En. Sec. 23, Ch. 60, L. 1927; amd. Sec. 2, Ch. 42, L. 1933; re-en. Sec. 1805.23, R.C.M. 1935; amd. Sec. 2, Ch. 65, L. 1939; amd. Sec. 5, Ch. 260, L. 1963; amd. Sec. 18, Ch. 240, L. 1971; amd. Sec. 30, Ch. 94, L. 1973; amd. Sec. 14, Ch. 428, L. 1973; amd. Sec. 3, Ch. 135, L. 1974; R.C.M. 1947, 81-407(part); amd. Sec. 4, Ch. 555, L. 1989.

Cross-References

Lease expiration dates — cancellation, 77-6-110, 77-6-210.

77-6-205. Renewal leases. (1) A lessee of state land classed as agricultural, grazing, town lot, city lot, or land valuable for commercial development who has paid all rentals due the state or who has voluntarily terminated a lease under 77-6-116 is entitled to have the lease renewed for a period not to exceed the maximum lease period provided in 77-6-109 at any time within 30 days prior to its expiration or within 30 days following voluntary termination if no other applications for lease of the land have been received 30 days prior to the expiration of the lease or within 30 days following voluntary termination. The renewal must be at the full market rental rate established by the board for the renewal period and subject to any other conditions at the time of the renewal imposed by law as terms of the lease. Except as provided in 77-6-212, if other applications have been received, the holder of the lease has the preference right to lease the land covered by the former lease by meeting the highest bid made by any other applicant. Applications for lease of lands in this section must be given preference in the order of their receipt at the office of the department.

(2) The board shall accept the highest bid. If the lessee exercises the preference right and believes the bid to be excessive, the lessee may request an administrative hearing. The request must contain a statement of reasons why the lessee believes the bid not to be in the state's best interest. The department shall grant the request for a hearing if it determines that the statement indicates evidence that the bid may not be in the state's best interests. The board may, after the hearing, reduce the rental from the amount bid if the lessee shows that the bid is not in the best interest of the state because it is above community standards for a lease of the land, would cause damage to the tract, or would impair its long-term productivity. If the board reduces the bid, it shall set forth its findings and conclusions in writing and inform the lessee and competitive bidder of the reduction. It is the duty of the board to secure the best lessees possible, so that the state may receive the maximum return possible with the least injury occurring to the land.

(3) A renewal lease may be canceled pursuant to 77-6-113, 77-6-208, 77-6-209, or 77-6-210 for a violation by the lessee that occurred during the previous lease term but no more than 3 years prior to the date on which the notice of cancellation required by 77-6-211 is issued. Cancellation procedures instituted but not completed before renewal are applicable to the renewal lease.

(4) A renewal lease may be voluntarily terminated pursuant to 77-6-116.

History: En. Sec. 21, Ch. 60, L. 1927; re-en. Sec. 1805.21, R.C.M. 1935; amd. Sec. 1, Ch. 65, L. 1939; amd. Sec. 1, Ch. 20, L. 1941; amd. Sec. 5, Ch. 207, L. 1945; amd. Sec. 3, Ch. 260, L. 1963; amd. Sec. 12, Ch. 428, L. 1973; amd. Sec. 1, Ch. 311, L. 1977; R.C.M. 1947, 81-405(1), (2); amd. Sec. 1, Ch. 73, L. 1983; amd. Sec. 4, Ch. 488, L. 1985; amd. Sec. 1, Ch. 687, L. 1985; amd. Sec. 1, Ch. 383, L. 1987; amd. Sec. 5, Ch. 555, L. 1989; amd. Sec. 1, Ch. 43, L. 1991; amd. Sec. 4, Ch. 586, L. 1993.

Cross-References

Lease bidding, 77-6-202.

77-6-206. Withdrawal of lands from leasing. Notwithstanding the foregoing provisions, the board may withdraw any agricultural or grazing land from further leasing for such period as the board determines to be in the best interest of the state. Bids for leases and applications for renewals of leases of state agricultural lands or state grazing lands shall be in writing and sealed and shall be submitted to the board at the office of the department.

History: En. Sec. 21, Ch. 60, L. 1927; re-en. Sec. 1805.21, R.C.M. 1935; amd. Sec. 1, Ch. 65, L. 1939; amd. Sec. 1, Ch. 20, L. 1941; amd. Sec. 5, Ch. 207, L. 1945; amd. Sec. 3, Ch. 260, L. 1963; amd. Sec. 12, Ch. 428, L. 1973; amd. Sec. 1, Ch. 311, L. 1977; R.C.M. 1947, 81-405(4).

77-6-207. Form of lease — bond optional. The general form of lease to state lands shall be prescribed by the board, and no changes in the form for these leases may be made without the approval of the board. All leases shall be issued in duplicate, one copy shall be mailed to the lessee, and one copy shall be preserved by the department. Unless the board decides otherwise,

these leases shall be issued without bonds, but the board may require a bond and prescribe the form and conditions thereof whenever it considers it necessary.

History: En. Sec. 29, Ch. 60, L. 1927; re-en. Sec. 1805.29, R.C.M. 1935; amd. Sec. 19, Ch. 428, L. 1973; R.C.M. 1947, 81-416.

77-6-208. Assignment of leases — subleasing — loss of preference right. (1) Leases to state lands may be assigned on blanks prescribed by the department, but an assignment is not binding on the state unless the assignment is filed with the department and approved by it and payment made of the assignment fee under 77-1-302.

(2) Preference must always be given to the applicant who wants the land for the applicant's own individual use, so that the full advantage coming from the leasing and use of the lands may reach those who actually till the soil and so that they are not compelled to pay a higher rental than that due the state.

(3) (a) If a lessee, other than a holder of a commercial lease, subleases state lands on terms less advantageous to the sublessee than the terms given by the state, the department shall cancel the lease, subject to the appeal procedure provided in 77-6-211.

(b) If a lessee subleases state lands without filing a copy of the sublease with the department and without receiving the department's approval, the department may cancel the lease, subject to the appeal procedure provided in 77-6-211.

(c) Upon approval by the department, a commercial leaseholder may sublease state land on terms less advantageous to the sublessee than the terms given to the lessee by the state. However, the department may adjust the lease rate to require that the lessee pay the state a portion of what the sublessee pays to the lessee.

(4) The subleasing of state land may result in loss of the preference right to renew the lease as provided in 77-6-212.

(5) An assignment or series of assignments may not be made to avoid the loss of the preference right under 77-6-212.

History: En. Sec. 32, Ch. 60, L. 1927; re-en. Sec. 1805.32, R.C.M. 1935; amd. Sec. 1, Ch. 14, L. 1937; amd. Sec. 12, Ch. 207, L. 1945; amd. Sec. 18, Ch. 121, L. 1965; amd. Sec. 3, Ch. 22, L. 1971; amd. Sec. 4, Ch. 27, L. 1971; amd. Sec. 21, Ch. 428, L. 1973; R.C.M. 1947, 81-419; amd. Sec. 2, Ch. 383, L. 1987; amd. Sec. 1, Ch. 96, L. 1993.

Cross-References

Renewal leases, 77-6-205.

Pledge or mortgage of leasehold interest, 77-6-401.

77-6-209. Change from grazing lease to agricultural lease. (1) When land is leased for grazing purposes and the lessee desires to cultivate any part of the land, the lessee shall, before doing any cultivation, make application to the department stating how much land the lessee desires to cultivate and showing the location in the section of the land and agree that for the remainder of the term of the lease the annual rental will be at the rate of the original lease until the time that the first crop is harvested from the cultivated portion of the lease. At the time of the first harvest, the lease must be at the original rate for that portion remaining as grazing land plus the crop share rental for that portion cultivated. If any person cultivates lands leased for grazing purposes without first securing the right to do so under this section, the department shall either cancel the lease, subject to the appeal procedure provided in 77-6-211, or require the lessee to pay twice the regular agricultural rental on the land cultivated in addition to the grazing rental.

(2) The provisions of this section must be incorporated in every lease.

History: En. Sec. 28, Ch. 60, L. 1927; re-en. Sec. 1805.28, R.C.M. 1935; amd. Sec. 9, Ch. 207, L. 1945; amd. Sec. 1, Ch. 120, L. 1963; amd. Sec. 2, Ch. 27, L. 1971; amd. Sec. 17, Ch. 428, L. 1973; R.C.M. 1947, 81-414; amd. Sec. 2568, Ch. 56, L. 2009.

77-6-210. Cancellation of leases. (1) The department may cancel a lease for any of the following causes:

(a) fraud, misrepresentation, or concealment of facts relating to its issue, which if known would have prevented its issue in the form or to the party issued;

(b) subleasing state land contrary to the provisions of 77-6-212;

(c) using the land for other purposes than those authorized by the lease;

(d) conviction of the lessee for a felony offense involving a dangerous drug, as defined in Title 50, chapter 32, and involving the planting, propagating, cultivating, growing, harvesting,

manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, or concealing of a dangerous drug on any portion of the unit; however, when a state land lease is held by an association, company, or corporation, conviction of a member of the association, company, or corporation under this subsection does not result in cancellation of the lease unless it appears that the operator, manager, or family in control of the association, company, or corporation is a consenting party or privy to the violation of this subsection;

(e) for any other cause which in the judgment of the department makes the cancellation of the lease necessary in order to do justice to all parties concerned and to protect the interests of the state.

(2) Cancellation of a lease under this section does not entitle the lessee to any refund of rentals paid or exemption from the payment of any rentals, penalties, or other compensation due the state.

History: En. Sec. 36, Ch. 60, L. 1927; re-en. Sec. 1805.36, R.C.M. 1935; amd. Sec. 5, Ch. 27, L. 1971; amd. Sec. 23, Ch. 428, L. 1973; R.C.M. 1947, 81-422(1); amd. Sec. 3, Ch. 383, L. 1987; amd. Sec. 2, Ch. 319, L. 1989.

Cross-References

Renewal leases, 77-6-205.
Unit of land defined, 77-6-221.
Date when rental due — cancellation for nonpayment, 77-6-506.

77-6-211. Procedure to cancel lease — appeal. (1) When the department cancels a lease pursuant to 77-6-113, 77-6-208, 77-6-209, or 77-6-210, it shall immediately notify the lessee by certified mail of the cancellation and the reasons therefor. The date of cancellation is 15 days from the date the notice is received by the lessee.

(2) The lessee has 15 days after the receipt of the notice to file with the department a notice of appeal for a hearing before the board. If notice of appeal is filed, the lease remains in effect until the decision of the board. Within 10 days after notice of appeal has been filed, the department shall set the time and place of hearing and shall so notify the lessee. The board may, after 10 days' notice to the lessee, change the time and place of hearing.

(3) Under rules it adopts, the board shall conduct an open hearing to determine whether the lease should be reinstated. The burden of proof is on the lessee to show why the lease should not be canceled. If the lease is reinstated, all of the lessee's rights and privileges thereunder shall be preserved; if not, the land shall be open for re-leasing as provided by law. If the board finds that the terms of the lease have been violated but in its judgment the violation is not serious enough to warrant cancellation, it may reinstate the lease and assess a penalty up to three times the annual rental against the lessee.

History: En. Sec. 36, Ch. 60, L. 1927; re-en. Sec. 1805.36, R.C.M. 1935; amd. Sec. 5, Ch. 27, L. 1971; amd. Sec. 23, Ch. 428, L. 1973; R.C.M. 1947, 81-422(2), (3).

Cross-References

Open hearings required, 2-3-203.
Adoption of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.
Notification of interested parties of termination, 77-6-204.

77-6-212. Loss of preference right — cancellation of lease — subleasing — pasturing agreements. (1) Except as provided in subsections (3) and (4), a lessee of state land classed as agricultural or grazing land may not exercise the preference right provided in 77-6-205 if the lessee subleases the land for more than 2 years in the term of the lease.

(2) The department shall cancel a lease of state agricultural or grazing land if the lessee subleases the land for more than 3 years during the term of the lease unless the sublease is made between members of a family as provided in subsection (3).

(3) A lessee under subsection (1) or (2) may sublease the land for a period of not more than 5 years without losing the preference right or the lease to state land if, during the term of the lease, the land is subleased only to a spouse, son, daughter, adopted child, or sibling of the lessee.

(4) The lessee does not lose the preference right or right to lease because of subleasing as provided under this section if:

(a) the sublease is one-third or less acres of the lease; or

(b) the sublease is considered to be a pasturing agreement and is approved in writing by the department prior to the initiation of the agreement.

(5) For purposes of this section, a sublease may not be considered a pasturing agreement unless the lessee personally retains management and physical control of the land and livestock. "Management" includes but is not limited to:

(a) providing all costs for improvements, land maintenance, and range renovation, if range renovation is approved by the department;

(b) making all decisions regarding rotation or other placement of livestock on state land;

(c) making all decisions regarding turn-in and turn-out dates of the livestock on state land; and

(d) making all decisions regarding proper range management, including placement of water, fencing, and salt.

(6) A lessee of state land classified as agricultural or grazing land loses the preference right provided in 77-6-205 upon conviction of a felony offense involving a dangerous drug, as defined in Title 50, chapter 32, and involving the planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, or concealing of a dangerous drug on any portion of the unit. When a state land lease is held by an association, company, or corporation, conviction of a member of the association, company, or corporation under this subsection does not result in loss of lease preference unless it appears that the operator, manager, or family in control of the association, company, or corporation is a consenting party or privy to the violation of this subsection.

History: En. Sec. 4, Ch. 383, L. 1987; amd. Sec. 3, Ch. 319, L. 1989; amd. Sec. 2569, Ch. 56, L. 2009.

Cross-References

Unit of land defined, 77-6-221.

77-6-213 through 77-6-220 reserved.

77-6-221. Unit of land defined. As used in this part, "unit" means privately deeded land or land leased from the state, or a combination of the two, that is under the control of one operator, manager, or family.

History: En. Sec. 1, Ch. 319, L. 1989.

Part 3
Improvements

77-6-301. Improvements authorized. A lessee of state lands may place upon the lands a reasonable amount of improvements directly related to conservation of the land or necessary for proper utilization of it. These improvements may consist of fences, cultivation, improvement of the land itself, irrigation ditches, sheds, wells, reservoirs, and similar improvements.

History: En. Sec. 34, Ch. 60, L. 1927; re-en. Sec. 1805.34, R.C.M. 1935; amd. Sec. 4, Ch. 257, L. 1965; amd. Sec. 22, Ch. 428, L. 1973; R.C.M. 1947, 81-421(part).

Cross-References

Water rights as improvement, 77-6-115.

77-6-302. Compensation for improvements — actual costs. (1) Except for the improvements described in 77-1-134, prior to renewal of a lease, the department shall request from the lessee a listing of improvements on the land associated with the lease, including the reasonable value of the improvements. This information must be provided to any party requesting to bid on the lease. Except for the improvements described in 77-1-134, when another person becomes the lessee of the land, the person shall pay to the former lessee the reasonable value of the improvements. The reasonable value may not be less than the full market value of the improvements.

(2) If the former lessee is unable to produce records establishing the reasonable value or if the former lessee and the new lessee are unable to agree on the reasonable value of the improvements, the value must be ascertained and fixed as provided in 77-6-306. The former lessee shall initiate this process within 60 days of notification from the department that there is a new lessee. The department notification must include an explanation of the requirements of 77-6-306. Failure to initiate the process within this time period results in all improvements, except those described in 77-1-134, becoming the property of the state.

(3) Upon the termination of a lease, the department may grant a license to the former lessee to remove the movable improvements from the land. Upon authorization, the movable improvements must be removed within 60 days or they become the property of the state unless the department for good cause grants additional time for the removal. The department shall charge the former lessee for the period of time that the improvements remain on the land after the termination of the lease.

History: En. Sec. 34, Ch. 60, L. 1927; re-en. Sec. 1805.34, R.C.M. 1935; amd. Sec. 4, Ch. 257, L. 1965; amd. Sec. 22, Ch. 428, L. 1973; R.C.M. 1947, 81-421(part); amd. Sec. 5, Ch. 586, L. 1993; amd. Sec. 5, Ch. 270, L. 2001; amd. Sec. 1, Ch. 476, L. 2005; amd. Sec. 14, Ch. 472, L. 2009.

Cross-References

Lease expiration dates, 77-6-110.

77-6-303. Determination of compensation. (1) In determining the value of the improvements described in 77-6-302, consideration must be given to their original cost, their present condition, their suitability for the uses ordinarily made of the land on which they are located, and to the general state of cultivation of the land, its productive capacity as affected by former use, and its condition with reference to the infestation of noxious weeds. Consideration must be given to all actual improvements and to all known effects that the use and occupancy of the land have had upon its productive capacity and desirability for the new lessee.

(2) However, if any of the improvements consist of the original plowing of the land and 1 year's crops have been raised on the land after the plowing, the compensation for the improvement may not exceed $2.50 per acre, and if two or more crops have been raised on the land after the original plowing, the original plowing may not be considered as an improvement to the land.

History: En. Sec. 34, Ch. 60, L. 1927; re-en. Sec. 1805.34, R.C.M. 1935; amd. Sec. 4, Ch. 257, L. 1965; amd. Sec. 22, Ch. 428, L. 1973; R.C.M. 1947, 81-421(part); amd. Sec. 15, Ch. 472, L. 2009.

77-6-304. Repealed. Sec. 7, Ch. 270, L. 2001.

History: En. Sec. 34, Ch. 60, L. 1927; re-en. Sec. 1805.34, R.C.M. 1935; amd. Sec. 4, Ch. 257, L. 1965; amd. Sec. 22, Ch. 428, L. 1973; R.C.M. 1947, 81-421(part).

77-6-305. Repealed. Sec. 7, Ch. 270, L. 2001.

History: En. Sec. 34, Ch. 60, L. 1927; re-en. Sec. 1805.34, R.C.M. 1935; amd. Sec. 4, Ch. 257, L. 1965; amd. Sec. 22, Ch. 428, L. 1973; R.C.M. 1947, 81-421(part); amd. Sec. 6, Ch. 586, L. 1993.

77-6-306. Arbitrators to fix value of improvements. (1) If the owner of any improvements on state lands of the type authorized by law at the time they were placed on state lands desires to sell these improvements to the new lessee and they are unable to agree on the value of the improvements pursuant to 77-6-302, the value must be ascertained and fixed by three arbitrators, one of whom is appointed by the owner of the improvements, one by the new lessee, and the third by the two appointed arbitrators. If any party refuses to appoint an arbitrator within 15 days of being requested to do so by the director of the department, the director may appoint an arbitrator for that party. An arbitrator appointed by the director has the same duties and powers as if appointed by one of the parties. The value of the improvements must be ascertained and fixed pursuant to 77-6-302.

(2) The reasonable compensation that the arbitrators may fix for their services must be paid in equal shares by the owner of the improvements and the new lessee.

(3) The value of the improvements ascertained and fixed is binding on both parties. If either party is dissatisfied with the valuation, the party may within 10 days appeal from the decision to the department. The department shall examine the records pertaining to the costs of the improvements, and except as provided in subsection (4), its decision is final. The department shall charge and collect the actual cost of the reexamination to the owner and the new lessee in the proportion as, in its judgment, justice may demand.

(4) If either party is dissatisfied with the valuation fixed by the department, the party may within 30 days after receipt of the department's decision petition the district court in the county in which the majority of the state land is located for judicial review of the decision.

History: En. Sec. 22, Ch. 60, L. 1927; re-en. Sec. 1805.22, R.C.M. 1935; amd. Sec. 4, Ch. 260, L. 1963; Sec. 81-406, R.C.M. 1947; redes. 81-421.1 and amd. by Sec. 13, Ch. 428, L. 1973; R.C.M. 1947, 81-421.1; amd. Sec. 1, Ch. 38, L. 1983; amd. Sec. 7, Ch. 586, L. 1993; amd. Sec. 327, Ch. 418, L. 1995; amd. Sec. 2, Ch. 476, L. 2005.

Cross-References

Arbitration, Title 27, ch. 5.

Part 4
Pledges and Mortgages of Leasehold Interests

77-6-401. Pledge or mortgage of leasehold interest in state lands. Any lessee of a grazing or agricultural lease of state lands is authorized to pledge the lease or mortgage the leasehold interest in the lands.

History: En. Sec. 1, Ch. 52, L. 1947; R.C.M. 1947, 81-425; amd. Sec. 2570, Ch. 56, L. 2009.

Cross-References

Mortgages of real property, Title 71, ch. 1, part 2.
Pledges — generally, Title 71, ch. 2.
Assignment of leases, 77-6-208.

77-6-402. Filing with department required. The pledgee of such lease or the mortgagee of such leasehold interest shall, within 30 days after receipt of the pledge agreement or mortgage, file it or a certified copy thereof with the department.

History: En. Sec. 2, Ch. 52, L. 1947; amd. Sec. 21, Ch. 121, L. 1965; amd. Sec. 4, Ch. 22, L. 1971; amd. Sec. 26, Ch. 428, L. 1973; R.C.M. 1947, 81-426.

77-6-403. Transfer of lease. (1) Except as provided in subsection (2), upon due proof that a person has acquired through foreclosure or conveyance the pledgor's or mortgagor's leasehold interest, the board shall transfer the lease to that person, who is subject to all the conditions, obligations, and liabilities and entitled to all the rights and privileges provided for in the lease. To authorize transfer of a lease, a decree of foreclosure must specifically refer to the lease or the leased premises, but neither the board nor the department is required to be named as a party to the action. The plaintiff shall, however, file a copy of the complaint with the department at the time it is filed with the court.

(2) Nothing in this section may be construed to require the board to complete the transfer of a lease to an assignee whom the board considers unqualified as a lessee of state lands.

History: En. Sec. 3, Ch. 52, L. 1947; R.C.M. 1947, 81-427; amd. Sec. 1, Ch. 679, L. 1991.

Cross-References

Liens on crops and improvements, 77-6-112.

77-6-404. Proof of termination of pledge or mortgage to be filed. The lessee of any grazing or agricultural lease of or leasehold interest in state lands which is pledged or mortgaged as provided in this part shall, within 30 days after payment of the indebtedness secured thereby or within 30 days after the pledge agreement is terminated or the leasehold interest is released from the mortgage, file with the department proof of that fact.

History: En. Sec. 4, Ch. 52, L. 1947; amd. Sec. 20, Ch. 121, L. 1965; amd. Sec. 5, Ch. 22, L. 1971; amd. Sec. 27, Ch. 428, L. 1973; R.C.M. 1947, 81-428.

Part 5
Rental Provisions

77-6-501. Agricultural leases. (1) For agricultural land, all leases except lease renewals on which the lessee has made improvements at the lessee's expense, as provided in subsection (3), and except leases issued after competitive bidding pursuant to 77-6-202 or 77-6-205, as provided in subsection (4), must be continued or made on a crop share rental basis of not less than one-fourth of the annual crops to the state or the usual landlord's share prevailing in the district, whichever is greater. The board may, however, approve special crop share rentals of less than one-fourth for high production cost crops, such as but not limited to potatoes and sugar beets, or for high production cost methods when these methods would result in more income to the state. The board may not delegate the authority to approve special crop share rentals.

(2) Except in the case of cash lease renewals under subsection (3), if it is in the best interests of the state, the department may authorize a lease on other bases than crop share, but in these cases, the rental must at least equal the value of the usual landlord's share prevailing in the district under similar circumstances, and the department shall set forth in the records the conditions of the case and the rental to be charged.

(3) Subject to 77-1-134, in a case in which the lessee has made substantial improvements for irrigation purposes to the lease at the lessee's own expense, the department shall authorize

a cash lease renewal at not less than $15 an acre on the portion of the lease that has been improved.

(4) For all agricultural leases issued through competitive bidding provided for under 77-6-202 or 77-6-205, the department shall require applicants to submit bids in the form of dollars per acre and shall issue the successful bidder a cash lease at the rate established through competitive bidding. Upon expiration of the first 10-year term of the cash lease, the lease may be renewed on a crop share rental basis of not less than one-fourth of the annual crops to the state or the usual landlord's share prevailing in the district, whichever is greater.

(5) The department shall set annual hay prices based on round bales for agricultural leases under the jurisdiction of the regional land offices.

History: En. Sec. 20, Ch. 60, L. 1927; re-en. Sec. 1805.20, R.C.M. 1935; amd. Sec. 2, Ch. 207, L. 1945; amd. Sec. 1, Ch. 254, L. 1947; amd. Sec. 2, Ch. 201, L. 1949; amd. Sec. 2, Ch. 260, L. 1963; amd. Sec. 2, Ch. 257, L. 1965; amd. Sec. 10, Ch. 428, L. 1973; amd. Sec. 1, Ch. 134, L. 1974; amd. Sec. 2, Ch. 135, L. 1974; R.C.M. 1947, 81-402(part); amd. Sec. 1, Ch. 54, L. 1985; amd. Sec. 1, Ch. 168, L. 1993; amd. Sec. 1, Ch. 5, L. 1999; amd. Sec. 16, Ch. 472, L. 2009; (5)En. Sec. 1, Ch. 397, L. 2021; amd. Sec. 2, Ch. 32, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 32, L. 2025. Amendment effective October 1, 2025.

Cross-References

Effect of competitive bidding, 77-6-508.

77-6-502. Grazing leases. (1) The rental rate for leasing all state grazing lands must attain full market value based upon the appraised animal-unit-month carrying capacity of the land as provided in 77-6-507.

(2) If the board raises the rentals for state grazing lands during the term of any leases of grazing land that are not issued as a result of competitive bidding, the lessee shall, for the years after the increase becomes effective, pay the increased rental, and the terms of grazing leases must provide for the increase.

History: (1)En. Sec. 20, Ch. 60, L. 1927; re-en. Sec. 1805.20, R.C.M. 1935; amd. Sec. 2, Ch. 207, L. 1945; amd. Sec. 1, Ch. 254, L. 1947; amd. Sec. 2, Ch. 201, L. 1949; amd. Sec. 2, Ch. 260, L. 1963; amd. Sec. 2, Ch. 257, L. 1965; amd. Sec. 10, Ch. 428, L. 1973; amd. Sec. 1, Ch. 134, L. 1974; amd. Sec. 2, Ch. 135, L. 1974; Sec. 81-402, R.C.M. 1947; (2)En. Sec. 23, Ch. 60, L. 1927; amd. Sec. 2, Ch. 42, L. 1933; re-en. Sec. 1805.23, R.C.M. 1935; amd. Sec. 2, Ch. 65, L. 1939; amd. Sec. 5, Ch. 260, L. 1963; amd. Sec. 18, Ch. 240, L. 1971; amd. Sec. 30, Ch. 94, L. 1973; amd. Sec. 14, Ch. 428, L. 1973; amd. Sec. 3, Ch. 135, L. 1974; Sec. 81-407, R.C.M. 1947; R.C.M. 1947, 81-402(part), 81-407(part); amd. Sec. 8, Ch. 586, L. 1993.

Cross-References

Leases by competitive bidding, 77-6-202.

77-6-503. Leases of city lots, town lots, and commercial property. The fair rental value of state-owned town lots, city lots, and land valuable for commercial development must be determined from time to time by the department with the approval of the board, and a record must be made of the values. State-owned town lots, city lots, or land valuable for commercial development may be leased at the current appraised rental value for terms not to exceed 99 years.

History: En. Sec. 20, Ch. 60, L. 1927; re-en. Sec. 1805.20, R.C.M. 1935; amd. Sec. 2, Ch. 207, L. 1945; amd. Sec. 1, Ch. 254, L. 1947; amd. Sec. 2, Ch. 201, L. 1949; amd. Sec. 2, Ch. 260, L. 1963; amd. Sec. 2, Ch. 257, L. 1965; amd. Sec. 10, Ch. 428, L. 1973; amd. Sec. 1, Ch. 134, L. 1974; amd. Sec. 2, Ch. 135, L. 1974; R.C.M. 1947, 81-402(part); amd. Sec. 5, Ch. 488, L. 1985; amd. Sec. 16, Ch. 404, L. 2003.

77-6-504. Lease rentals for part year. Lease rentals for agricultural or grazing state land, where the lease term begins after February 28 in the initial year of the lease, shall be for the whole of the yearly rate for the fractional part of the initial year if the lease term begins prior to July 1 in such fractional part of year, and for one-half the yearly rate for such fractional part of the year if the lease term begins after June 30 in the initial year and prior to the succeeding February 28.

History: En. Sec. 7, Ch. 207, L. 1945; R.C.M. 1947, 81-410.

Cross-References

Expiration date — leases, 77-6-110.

77-6-505. No reduction for summer fallow. No credit or reduction or refund in rental shall be allowed any lessee of agricultural or grazing state land on account of summer fallow.

History: En. Sec. 8, Ch. 207, L. 1945; R.C.M. 1947, 81-411.

77-6-506. Date when rental due — penalty — cancellation for nonpayment. (1) For a grazing lease, for the grazing portion of a lease containing both agricultural and grazing land, and for agricultural leases not based on a crop share, the grazing rental for the first year of the lease must be paid at or before the time of the execution of the lease; however, in the case of a lease that takes effect on and after October 1 and before the expiration of the coming February, both the rental for the fractional year and for the next full year beginning March 1 must be paid and collected at the time of issuing the lease. If the United States is the lessee of state lands for grazing purposes, the rental is payable at the end of each year of the lease. The rental for each succeeding year on a lease issued after July 1, 1999, with the exception of a lease that involves the United States as the lessee, is due and payable before March 1. If the rental is not paid before March 1, a $25 penalty must be imposed on the lessee. If the full rental and the $25 penalty are not paid by April 1, the entire lease is canceled.

(2) For an agricultural lease and for the agricultural portion of a lease containing both grazing and agricultural land, when the rental is paid on a crop share basis, on a cash lease basis, or on a crop share/cash basis, the rental is due in cash on or before November 15 of the year in which the crop is harvested. If the rental is not paid on or before November 15 of the year of crop harvest, a $25 penalty must be imposed on the lessee. If the full rental and the $25 penalty are not paid on or before December 31 of the year in which the crop is harvested, the entire lease is canceled. The department may extend the deadline in writing. If the lessee does not make the rental payment by the date of extension, the entire lease is canceled. Any rental payment made after November 15 of the year in which the crop is harvested, including payment made after an extension of the deadline, must include the $25 penalty.

(3) For all state land leases and licenses other than those described in subsections (1) and (2), the department shall impose a $25 penalty for failure to make a rental payment by any deadline established by statute, by rule, or in the lease or license.

(4) At least 2 weeks prior to the final deadline for payment under subsection (1) or (2), the department shall send by certified mail to each lessee who has not made payment a letter notifying the lessee that the lease is canceled if payment and the $25 penalty are not received by the final deadline. The notice must be sent to the lessee at the address given in the lease.

(5) When a lease is canceled under subsection (1) or (2), the department shall notify the lessee of the cancellation by letter at the address given in the lease.

(6) The department may, within 30 days of cancellation, reinstate a canceled agricultural, grazing, or other surface lease upon payment of the rental that is owing, plus a penalty not to exceed three times the annual rental, except that a penalty imposed under this subsection may not be less than $500.

(7) A canceled lease that is not reinstated must be made available for lease as provided in 77-6-202.

(8) The penalties collected pursuant to this section must be deposited into the same trust account as the rentals from the state land to which the penalties apply.

History: En. Sec. 26, Ch. 60, L. 1927; re-en. Sec. 1805.26, R.C.M. 1935; amd. Sec. 1, Ch. 197, L. 1943; amd. Sec. 2, Ch. 22, L. 1971; amd. Sec. 15, Ch. 428, L. 1973; R.C.M. 1947, 81-412; amd. Sec. 1, Ch. 473, L. 1985; amd. Sec. 1, Ch. 187, L. 1989; amd. Sec. 1, Ch. 140, L. 1991; amd. Sec. 2, Ch. 5, L. 1999; amd. Sec. 3, Ch. 32, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 32, L. 2025. Amendment effective October 1, 2025.

Cross-References

Lease to United States for military purposes authorized, 77-6-103.
Bid deposit and forfeiture requirements, 77-6-203.
Notification of interested parties when lease canceled, 77-6-204.
Cancellation of lease for other reasons, 77-6-210.

77-6-507. Formula for fixing annual rental. (1) In this section:

(a) "animal unit" means one cow, one horse, five sheep, or five goats;

(b) "animal-unit-month carrying capacity" means that amount of natural feed necessary for the complete subsistence of one animal unit for 1 month.

(2) The board shall establish the per annum rental rate per section of all grazing lands that are the property of the state by multiplying a factor established by the board pursuant to 77-6-502 times the average price per pound of beef cattle on the farm in Montana for the previous year times the animal-unit-month carrying capacity of the land.

(3) The carrying capacity of the land to be used in the above formula must be in accordance with the determinations of the department made under 77-6-201.

(4) The average price per pound of beef cattle on the farm in Montana must be taken from statistics published by the United States department of agriculture current at the time of computation of the rental or from other reliable sources current at that time.

(5) In establishing the rental rate described in subsection (2), the board shall consider applicable elements that include but are not limited to those set forth in 77-1-106.

History: **En. Sec. 2, Ch. 190, L. 1949; amd. Sec. 1, Ch. 229, L. 1951; amd. Sec. 1, Ch. 284, L. 1959; amd. Sec. 6, Ch. 260, L. 1963; amd. Sec. 1, Ch. 97, L. 1973; amd. Sec. 28, Ch. 428, L. 1973; R.C.M. 1947, 81-433; amd. Sec. 1, Ch. 259, L. 1979; amd. Sec. 1, Ch. 38, L. 1991; amd. Sec. 12, Ch. 586, L. 1993.**

Cross-References

Appraisal of grazing land, 77-6-201.

77-6-508. Effect of competitive bidding. Whenever competitive bidding establishes a rental price higher than the rental price established by the board, the board in leasing the lands shall incorporate in the lease conservation requirements as are considered necessary for the protection of the grass or forage crops.

History: **En. Sec. 3, Ch. 190, L. 1949; R.C.M. 1947, 81-434; amd. Sec. 9, Ch. 586, L. 1993.**

Cross-References

Competitive bidding — when required, 77-6-202.

TITLES 78 AND 79

RESERVED

TITLES 78 AND 79

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TITLES 78 AND 79
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TITLE 80
AGRICULTURE

Ch.

1. Department of Agriculture.
2. Agricultural Services.
3. Produce.
4. Agricultural Commodities.
5. Agricultural Seed and Patented Plant Material.
6. Apiculture.
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8. Pesticides.
9. Commercial Feeds.
10. Commercial Fertilizers.
11. Marketing.
12. Montana Agricultural Loan Authority Act.
13. Agricultural Assistance and Counseling Program. Repealed.
14. Production Loan Linked Deposit Program. Terminated.
15. Montana Agricultural Chemical Ground Water Protection Act.
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CHAPTER 1
DEPARTMENT OF AGRICULTURE

Part 1 — General Provisions

80-1-101. Definition.
80-1-102. Duties of department.
80-1-103. Restriction on use of revenue to include department fees.
80-1-104. Analytical laboratory services — rulemaking authority — deposit of fees.

Part 2 — Farm Statistics

80-1-201. Department of revenue to collect farm statistics.
80-1-202. Delivery to director of agriculture.
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80-1-204. Penalty for refusal to furnish statistics.

Part 3 — Voluntary Environmental Audit Act (Terminated)

Chapter Cross-References

Department of Agriculture and special levies created, Art. XII, sec. 1, Mont. Const.

Taxation provisions — tax exemption provisions, 15-6-201, 15-6-206, 15-6-207.

Taxation provisions — agricultural appraisal — valuation of land as agricultural, Title 15, ch. 7, part 2.

Land use — Realty Transfer Act — exceptions for agricultural lands, 15-7-307.

Land use — assessment rates for agricultural lands — market value standard — valuation exception for agricultural implements and machinery, 15-8-111.

Financial obligations — obligations on "seed loans" — County Treasurers' lists of delinquent loans, 15-16-701.

Taxation provisions — individual income tax exceptions for farmers and ranchers, 15-30-2512.

Taxation provisions — corporate income tax exemption for agricultural and horticultural organizations, 15-31-102.

Taxation provisions — gasoline and special fuel taxes, Title 15, ch. 70, part 4.

Montana Agricultural Center and Museum of the Northern Great Plains established, 23-1-109.

Termination, cancellation, nonrenewal, or alteration of farm implements dealership agreements, Title 30, ch. 11, part 8.

Wage provisions for agricultural labor, 39-3-404 through 39-3-406.

Agricultural labor exempt from unemployment compensation law, Title 39, ch. 51, part 2.

Agricultural vehicle provisions — exemption of farm implements from certain identification requirements, 61-3-431, 69-12-408.

Agricultural vehicle provisions — motor vehicle license exemption for tractor drivers, 61-5-104, 61-8-101.

Agricultural vehicle provisions — exceptions to equipment requirements, 61-9-109, 61-9-215, 61-9-406, 61-10-102, 61-10-122, 61-10-123.

Agricultural vehicle provisions — slow-moving vehicles — equipment requirements, 61-9-415.

Agricultural vehicle provisions — special fees for certain farm vehicles, 61-10-206.

Land use — relocation of power lines upon installation of agricultural improvements — sprinkler irrigation systems, Title 69, ch. 4, part 4.

Land use — relocation of farm persons displaced when land condemned, Title 70, ch. 31, parts 1 and 3.
Agricultural liens — threshers' liens, 71-3-124; Title 71, ch. 3, part 8.
Agricultural liens — farm laborers' liens, Title 71, ch. 3, part 4.
Agricultural liens — crop liens for seed or grain and liens for hail insurance, Title 71, ch. 3, part 7.
Agricultural liens — agisters' liens and liens for service, Title 71, ch. 3, part 12.
Land use — land use planning boards, Title 76, ch. 1.
Land use — local regulation of subdivisions — agriculture-related provisions, 76-3-207, 76-3-401, 76-3-608.
Land use — state lands classification, Title 77, ch. 1, part 4.
Land use — conflicting or harmonious leasing of state lands for mining and agricultural purposes, 77-3-104, 77-3-120, 77-3-207.
Land use — noxious weed management funding, Title 80, ch. 7, part 8.
Anhydrous ammonia facilities — adoption of rules by Department, 80-10-503.
Agricultural loans — loan guaranty program — fund, 80-12-215, 80-12-216.
Montana Growth Through Agriculture Act, Title 90, ch. 9.

Part 1
General Provisions

Part Cross-References
Organization of Department of Agriculture, Title 2, ch. 15, part 30.

80-1-101. Definition. Unless the context requires otherwise, in this title "department" means the department of agriculture provided for in Article XII, section 1, of the Montana constitution and in Title 2, chapter 15, part 30.

History: En. 3-106.1 by Sec. 1, Ch. 218, L. 1974; R.C.M. 1947, 3-106.1.

80-1-102. Duties of department. The department shall:

(1) encourage and promote the interests of agriculture, including horticulture and apiculture, and all other allied industries;

(2) collect and publish statistics relating to the production and marketing of crops and other agricultural products so far as the information may be of value to the agricultural and allied interests of the state;

(3) assist, encourage, and promote the organization of farmers' institutes, horticultural and agricultural societies, the holding of fairs, livestock shows, or other exhibits of the products of agriculture;

(4) adopt standards for open and closed receptacles for farm products and standards for the grade and other classification of farm products;

(5) cooperate with producers and consumers in devising and maintaining economical and efficient systems of distribution and aid in the reduction of waste and expense incidental to marketing;

(6) have the authority to maintain a market news service, including information as to crops, freight rates, commission rates, and other matters as may be of service to producers and consumers, and act as a clearinghouse for information of value to producers and consumers;

(7) gather and diffuse information concerning the supply, demand, prevailing prices, and commercial movement of farm products;

(8) investigate the practices and methods of factors, commission merchants, and others who receive, solicit, buy, sell, handle on commission or otherwise, or deal in grain, vegetables, or other farm products, so that distribution of the commodities is accomplished efficiently, economically, and without hardship, waste, or fraud;

(9) cooperate with Montana state university-Bozeman, the agricultural experiment station, and the federal government for the betterment of the agricultural industries of the state, the improvement of rural life, and promotion of equality of opportunity for the farmers of the state;

(10) take and hold in the name of the state of Montana property, real and personal, acquired by gifts, subscriptions, donations, and bequests;

(11) sell and dispose of personal property owned by it in a manner the department may provide, when in the judgment of the department the sale or disposal best promotes the purposes for which the department is established;

(12) contract in respect to any matter within the scope of its authority;

(13) enforce this title and all other laws for the protection and regulation of agriculture.

History: En. Sec. 7, Ch. 216, L. 1921; re-en. Sec. 3561, R.C.M. 1921; re-en. Sec. 3561, R.C.M. 1935; amd. Sec. 13, Ch. 80, L. 1961; amd. Sec. 2, Ch. 218, L. 1974; R.C.M. 1947, 3-107; amd. sec. 36, Ch. 308, L. 1995.

Cross-References

Agriculture in Montana schools program account — administration, 15-30-2388.

Agricultural experimentation and research, 20-25-222 through 20-25-232.

80-1-103. Restriction on use of revenue to include department fees. The restriction in Article XII, section 1(2), of the Montana constitution, which provides that revenue derived from special levies made on agricultural commodities must be used solely for the purposes of the levies, applies to all fees assessed by the department for licenses, registrations, inspections, and other purposes pursuant to this title. Levy purposes may include department administrative expenses.

History: En. Sec. 1, Ch. 71, L. 2003.

80-1-104. Analytical laboratory services — rulemaking authority — deposit of fees. (1) The department is authorized to provide analytical laboratory services for:

(a) programs it operates under this title;

(b) other state or federal agencies;

(c) the department of revenue for the purposes of Title 16, chapter 12, as allowed by federal law; and

(d) private parties.

(2) The department may enter into a contract or a memorandum of understanding for the space and equipment necessary for operation of the analytical laboratory.

(3) (a) The department may adopt rules establishing fees for testing services required under this title or provided to another state agency, a federal agency, or a private party.

(b) Money collected from the fees must be deposited in the appropriate related account in the state special revenue fund to the credit of the department to pay costs related to analytical laboratory services provided pursuant to this section.

History: En. Sec. 1, Ch. 31, L. 2015; amd. Sec. 27, Ch. 408, L. 2017; amd. Sec. 51, I.M. No. 190, approved Nov. 3, 2020; amd. Sec. 99, Ch. 576, L. 2021.

Part 2
Farm Statistics

Part Cross-References

Taxation provisions — tax exemption provisions, 15-6-201, 15-6-206, 15-6-207.

Taxation provisions — agricultural appraisal — valuation of land as agricultural, Title 15, ch. 7, part 2.

Taxation provisions — market value standard — valuation exception for agricultural implements and machinery, 15-8-111.

Taxation provisions — individual income tax exceptions for farmers and ranchers, 15-30-2512.

Taxation provisions — corporate income tax exemption for agricultural and horticultural organizations, 15-31-102.

Taxation provisions — gasoline and special fuel taxes, Title 15, ch. 70, part 4.

80-1-201. Department of revenue to collect farm statistics. It shall be the duty of the department of revenue, at the time of making the annual assessment of property to collect such statistics in relation to farm products and agricultural resources from each farm owner, operator, or renter as shall be called for by the director of agriculture and on blanks to be prepared and furnished by the director of agriculture.

History: En. Sec. 1, Ch. 187, L. 1921; re-en. Sec. 2043, R.C.M. 1921; re-en. Sec. 2043, R.C.M. 1935; amd. Sec. 22, Ch. 405, L. 1973; R.C.M. 1947, 84-449.

Cross-References

Land use — Realty Transfer Act — exceptions for agricultural lands, 15-7-307.

Land use — assessment rates for agricultural lands — market value standard, 15-8-111.

Land use — relocation of power lines upon installation of agricultural improvements — sprinkler irrigation systems, Title 69, ch. 4, part 4.

Land use — relocation of farm persons displaced when land condemned, Title 70, ch. 31, parts 1 and 3.

Land use — land use planning boards, Title 76, ch. 1.

Land use — local regulation of subdivisions — agriculture-related provisions, 76-3-207, 76-3-401, 76-3-608.

Land use — state lands classification, Title 77, ch. 1, part 4.

Land use — conflicting or harmonious leasing of state lands for mining and agricultural purposes, 77-3-104, 77-3-120, 77-3-207.

80-1-202. Delivery to director of agriculture. The original blanks upon which the statistics are gathered by the department of revenue shall be returned to the director of agriculture immediately on completion of the assessment work and not later than July 1 each year.

History: En. Sec. 2, Ch. 187, L. 1921; re-en. Sec. 2044, R.C.M. 1921; re-en. Sec. 2044, R.C.M. 1935; amd. Sec. 23, Ch. 405, L. 1973; R.C.M. 1947, 84-450.

80-1-203. Statistics, how obtained. If for any reason the department of revenue is unable to obtain the statistics from any farm owner, operator, or renter, it shall obtain them from the most reliable source, so that the returns may be complete.

History: En. Sec. 3, Ch. 187, L. 1921; re-en. Sec. 2045, R.C.M. 1921; re-en. Sec. 2045, R.C.M. 1935; amd. Sec. 24, Ch. 405, L. 1973; R.C.M. 1947, 84-451.

80-1-204. Penalty for refusal to furnish statistics. Any farm owner, operator, or renter refusing to furnish the information called for in 80-1-201, or willfully furnishing fraudulent information to the department of revenue, upon proper request therefor, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than $10 or more than $100, and cost of prosecution.

History: En. Sec. 4, Ch. 187, L. 1921; re-en. Sec. 2046, R.C.M. 1921; re-en. Sec. 2046, R.C.M. 1935; amd. Sec. 25, Ch. 405, L. 1973; R.C.M. 1947, 84-452.

Part 3
Voluntary Environmental Audit Act (Terminated)

80-1-301. Terminated. Sec. 10, Ch. 534, L. 1997.
History: En. Sec. 1, Ch. 534, L. 1997.

80-1-302. Terminated. Sec. 10, Ch. 534, L. 1997.
History: En. Sec. 2, Ch. 534, L. 1997.

80-1-303. Terminated. Sec. 10, Ch. 534, L. 1997.
History: En. Sec. 3, Ch. 534, L. 1997.

80-1-304. Terminated. Sec. 10, Ch. 534, L. 1997.
History: En. Sec. 4, Ch. 534, L. 1997.

80-1-305. Terminated. Sec. 10, Ch. 534, L. 1997.
History: En. Sec. 5, Ch. 534, L. 1997.

80-1-306. Terminated. Sec. 10, Ch. 534, L. 1997.
History: En. Sec. 6, Ch. 534, L. 1997.

CHAPTER 2
AGRICULTURAL SERVICES

Part 1 — Rural Rehabilitation

80-2-101. Trust assets of rural rehabilitation corporation — department of agriculture designated to make application.
80-2-102. Agreements with United States secretary of agriculture authorized.
80-2-103. Administration of trust assets.
80-2-104. Powers of department — claims and obligations — property acquired at foreclosure.
80-2-105. United States and secretary of agriculture free from liability.
80-2-106. Rules.

Part 2 — Hail Insurance

80-2-201. Powers and duties of board of hail insurance.
80-2-202. Compensation of presiding officer and officers.
80-2-203. Participation in program — fee.
80-2-204. Duty of department — election of benefits of law.
80-2-205. What crops subject to provisions of law.
80-2-206. Payment.
80-2-207. Delinquent fees — application by delinquent — crop lien.
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80-2-220. Rules — hail insurance fees.
80-2-221. Fee for hail insurance.
80-2-222. Board to establish amount of rates — disposition of funds.
80-2-223. Repealed.
80-2-224. Fee — notice — when payable.
80-2-225. Real estate lien — creation.
80-2-226. Repealed.
80-2-227. Hail insurance secured by crop lien only.
80-2-228. Reserve fund.
80-2-229. Withdrawal of crop in case of destruction through other means.
80-2-230. Collection of fees — release of lien — interest.
80-2-231. Repealed.
80-2-232. Department's duty — warrants — transfers to state general fund.
80-2-233 through 80-2-240 reserved.
80-2-241. Report of losses.
80-2-242. Adjusters — appointment — qualifications — duties.
80-2-243. Disputed appraisal.
80-2-244. Payment of losses.
80-2-245. Benefits exempt from execution.

Part 3 — Plant Sampling

80-2-301. Plant sampling provided — fees — rulemaking authority.

Chapter Cross-References

Department of Agriculture and special levies created, Art. XII, sec. 1, Mont. Const.

Fertilizer Advisory Committee, 2-15-1516.

Montana Agriculture Development Council, 2-15-3015.

County agricultural and livestock services, 7-21-3201 through 7-21-3203.

Taxation provisions — tax exemption provisions, 15-6-201, 15-6-206, 15-6-207.

Taxation provisions — agricultural appraisal — valuation of land as agricultural, Title 15, ch. 7, part 2.

Land use — Realty Transfer Act — exceptions for agricultural lands, 15-7-307.

Land use — assessment rates for agricultural lands — market value standard — valuation exception for agricultural implements and machinery, 15-8-111.

Financial obligations — obligations on "seed loans" — County Treasurers' lists of delinquent loans, 15-16-701.

Taxation provisions — individual income tax exceptions for farmers and ranchers, 15-30-2512.

Taxation provisions — corporate income tax exemption for agricultural and horticultural organizations, 15-31-102.

Taxation provisions — gasoline and special fuel taxes, Title 15, ch. 70, part 4.

Termination, cancellation, nonrenewal, or alteration of farm implements dealership agreements, Title 30, ch. 11, part 8.

Wage provisions for agricultural labor, 39-3-404 through 39-3-406.

Agricultural labor exempt from unemployment compensation law, Title 39, ch. 51, part 2.

Agricultural vehicle provisions — exemption of farm implements from certain identification requirements, 61-3-431, 69-12-408.

Agricultural vehicle provisions — motor vehicle license exemption for tractor drivers, 61-5-104, 61-8-101.

Agricultural vehicle provisions — exceptions to equipment requirements, 61-9-109, 61-9-215, 61-9-406, 61-10-102, 61-10-122, 61-10-123.

Agricultural vehicle provisions — slow-moving vehicles — equipment requirements, 61-9-415.

Agricultural vehicle provisions — special fees for certain farm vehicles, 61-10-206.

Land use — relocation of power lines upon installation of agricultural improvements — sprinkler irrigation systems, Title 69, ch. 4, part 4.

Land use — relocation of farm persons displaced when land condemned, Title 70, ch. 31, parts 1 and 3.

Agricultural liens — threshers' liens, 71-3-124; Title 71, ch. 3, part 8.

Agricultural liens — farm laborers' liens, Title 71, ch. 3, part 4.

Agricultural liens — crop liens for seed or grain and liens for hail insurance, Title 71, ch. 3, part 7.

Agricultural liens — agisters' liens and liens for service, Title 71, ch. 3, part 12.

Land use — land use planning boards, Title 76, ch. 1.

Land use — local regulation of subdivisions — agriculture-related provisions, 76-3-207, 76-3-401, 76-3-608.

Land use — state lands classification, Title 77, ch. 1, part 4.

Land use — conflicting or harmonious leasing of state lands for mining and agricultural purposes, 77-3-104, 77-3-120, 77-3-207.

Agricultural loans — loan guaranty program — fund, 80-12-215, 80-12-216.

Atmospheric water — weather modification, Title 85, ch. 3, part 1.

Montana Growth Through Agriculture Act, Title 90, ch. 9.

Part 1
Rural Rehabilitation

Part Cross-References

Farm housing provisions, 7-15-2113, 7-15-2121, 7-15-2122.

Appropriation of money for extension work in agriculture authorized, 7-21-3203.

80-2-101. Trust assets of rural rehabilitation corporation — department of agriculture designated to make application. The department of agriculture is designated as the department of Montana state government to apply to the secretary of agriculture of the United States or any other proper federal official under Public Law 499, 81st congress, approved May 3, 1950, for the return of the trust assets, either funds or property, held by the United States as trustee in behalf of the Montana rural rehabilitation corporation.

History: En. Sec. 1, Ch. 112, L. 1951; amd. Sec. 103, Ch. 218, L. 1974; R.C.M. 1947, 3-2801.

80-2-102. Agreements with United States secretary of agriculture authorized. (1) The department shall enter into agreements with the secretary of agriculture of the United States under section 2(f) of Public Law 499, 81st congress, upon terms and conditions and for periods of time as are mutually agreeable, authorizing the secretary of agriculture to accept, administer, spend, and use in the state all or any part of the trust assets or any other funds of the state which may be appropriated for carrying out the purposes of Titles I and II of the Bankhead-Jones Farm Tenant Act, in accordance with the applicable provisions of Title IV thereof, as amended, and do all things necessary to carry out the agreements.

(2) The program must be administered with funds appropriated for such purposes and any request for an increase of spending authority for administering the program requires a budget amendment and is subject to Title 17, chapter 7, part 4.

History: En. Sec. 2, Ch. 112, L. 1951; amd. Sec. 104, Ch. 218, L. 1974; R.C.M. 1947, 3-2802; amd. Sec. 3, Ch. 328, L. 1985.

80-2-103. Administration of trust assets. Funds and the proceeds of the trust assets that are not authorized to be administered by the secretary of agriculture under 80-2-102 must be received by the department and paid by it to the state treasurer for deposit in the state special revenue fund, to be used for expenditure or obligation by the department for the purposes of 80-2-102 or for the rural rehabilitation purposes permissible under the charter of the now dissolved Montana rural rehabilitation corporation as may be agreed upon between the department and the secretary of agriculture, subject to Public Law 499.

History: En. Sec. 3, Ch. 112, L. 1951; amd. Sec. 45, Ch. 147, L. 1963; amd. Sec. 105, Ch. 218, L. 1974; R.C.M. 1947, 3-2803; amd. Sec. 38, Ch. 281, L. 1983; amd. Sec. 33, Ch. 703, L. 1985; amd. Sec. 11, Ch. 628, L. 1989; amd. Sec. 25, Ch. 389, L. 1999; amd. Sec. 32, Ch. 34, L. 2001.

80-2-104. Powers of department — claims and obligations — property acquired at foreclosure. (1) The department may:

(a) collect, compromise, adjust, or cancel claims and obligations arising out of or administered under this part or under any mortgage, lease, contract, or agreement entered into or administered under this part and, if necessary, pursue them to final collection in any court having jurisdiction;

(b) bid for and purchase at any execution, foreclosure, or other sale or otherwise acquire property upon which the department has a lien by reason of a judgment or execution or that is pledged, mortgaged, or conveyed or that otherwise secures any loan or other indebtedness owing to or acquired by the department under this part;

(c) accept title to any property purchased or acquired, operate or lease the property for a period necessary to protect the investment, and sell or otherwise dispose of the property in a manner consistent with this part.

(2) The authority granted to the department in this section may be delegated to the secretary of agriculture with respect to funds or assets authorized to be administered and used by the secretary of agriculture under agreements entered into under 80-2-102.

History: En. Sec. 4, Ch. 112, L. 1951; amd. Sec. 106, Ch. 218, L. 1974; R.C.M. 1947, 3-2804; amd. Sec. 2571, Ch. 56, L. 2009.

Cross-References

Financial obligations — obligations on "seed loans" — County Treasurers' lists of delinquent loans, 15-16-701.

Land use — relocation of farm persons displaced when land condemned, Title 70, ch. 31, parts 1 and 3.

Department defined, 80-1-101.

80-2-105. United States and secretary of agriculture free from liability. The United States and the secretary of agriculture are free from liability by virtue of the transfer of the assets to the department under this part.

History: En. Sec. 5, Ch. 112, L. 1951; amd. Sec. 107, Ch. 218, L. 1974; R.C.M. 1947, 3-2805.

80-2-106. Rules. The department may adopt rules necessary to carry out the provisions of this part.

History: En. 3-2806 by Sec. 1, Ch. 30, L. 1977; R.C.M. 1947, 3-2806.

Part 2
Hail Insurance

Part Cross-References

Farm mutual insurers, Title 33, ch. 4.

80-2-201. Powers and duties of board of hail insurance. The board of hail insurance provided for in 2-15-3003:

(1) shall hold meetings when necessary for the conduct of its business;

(2) may adopt rules for the administration of this part;

(3) shall prescribe blank forms for all purposes necessary, proper, and incidental to the effective operation and enforcement of this part; and

(4) shall use any appropriate means of communication to inform Montana producers of the purposes, scope, and benefits of this part in furnishing protection against loss by hail at the actual cost of the risk to all persons who may elect to become subject to the provisions of this part.

History: En. Sec. 1, Ch. 169, L. 1917; amd. Sec. 1, Ch. 17, Ex. L. 1918; amd. Sec. 1, Ch. 141, L. 1921; re-en. Sec. 350, R.C.M. 1921; amd. Sec. 1, Ch. 40, L. 1923; re-en. Sec. 350, R.C.M. 1935; amd. Sec. 58, Ch. 391, L. 1973; amd. Sec. 140, Ch. 218, L. 1974; amd. Sec. 2, Ch. 468, L. 1977; R.C.M. 1947, 82-1501(part); amd. Sec. 4, Ch. 691, L. 1983; amd. Sec. 203, Ch. 574, L. 2001.

80-2-202. Compensation of presiding officer and officers. (1) The appointed members of the board of hail insurance are entitled to compensation as provided in 2-15-122 for each day they are engaged in the transaction of official business.

(2) All board members and employees must be allowed expenses as provided in 2-18-501 through 2-18-503.

(3) All other public officials specified in this chapter shall perform the duties relative to hail insurance without other compensation than that allowed by law.

History: En. Sec. 12, Ch. 169, L. 1917; amd. Sec. 2, Ch. 183, L. 1921; re-en. Sec. 363, R.C.M. 1921; amd. Sec. 12, Ch. 40, L. 1923; amd. Sec. 1, Ch. 165, L. 1929; re-en. Sec. 363, R.C.M. 1935; amd. Sec. 1, Ch. 53, L. 1951; amd. Sec. 1, Ch. 165, L. 1961; amd. Sec. 1, Ch. 188, L. 1965; amd. Sec. 11, Ch. 237, L. 1967; amd. Sec. 38, Ch. 93, L. 1969; amd. Sec. 34, Ch. 13, L. 1977; amd. Sec. 13, Ch. 343, L. 1977; R.C.M. 1947, 82-1519; amd. Sec. 2572, Ch. 56, L. 2009; amd. Sec. 1, Ch. 30, L. 2015.

80-2-203. Participation in program — fee. (1) A person or an association of persons engaged in the growing of crops or other agricultural or horticultural products subject to injury or destruction by hail may, by individual or joint election filed with and approved by the board of hail insurance, accept the provisions of this part and elect to become subject to this part. The risks may be classified by the board, and suitable fees may be imposed as agreed upon by the board and the persons. The persons are entitled to the benefits and protection afforded by the insurance provisions of this part.

(2) Each person who desires to become subject to the provisions of this part shall file with the department the properly filled out form not later than August 15. The person is chargeable with the fee provided for on lands growing crops subject to injury or destruction by hail and shall share in the protection and benefits under the hail insurance provisions of this part. The application for hail insurance is in full force and effect at 12:01 a.m. on the day immediately following submission of the application to the department.

(3) This part may not be construed to empower anyone except the actual owner of the land to make the land subject to the hail fee provided in this part.

History: (1)En. Sec. 11, Ch. 169, L. 1917; re-en. Sec. 362, R.C.M. 1921; re-en. Sec. 362, R.C.M. 1935; Sec. 82-1518, R.C.M. 1947; (2), (3)En. Sec. 1, Ch. 169, L. 1917; amd. Sec. 1, Ch. 17, Ex. L. 1918; amd. Sec. 1, Ch. 141, L. 1921; re-en. Sec. 350, R.C.M. 1921; amd. Sec. 1, Ch. 40, L. 1923; re-en. Sec. 350, R.C.M. 1935; amd. Sec. 58, Ch. 391, L. 1973; amd. Sec. 140, Ch. 218, L. 1974; amd. Sec. 2, Ch. 468, L. 1977; Sec. 82-1501, R.C.M. 1947; R.C.M. 1947, 82-1501(3), 82-1518; amd. Sec. 33, Ch. 451, L. 1993; amd. Sec. 144, Ch. 27, Sp. L. November 1993; amd. Sec. 204, Ch. 574, L. 2001; amd. Sec. 1, Ch. 275, L. 2007; amd. Sec. 1, Ch. 399, L. 2013.

80-2-204. Duty of department — election of benefits of law. The department shall upon request explain the provisions of this part to each person engaged in the growing of crops subject to injury or destruction by hail. The department shall issue hail insurance policies to each person who desires to become subject to this part, to become liable for the fee provided for in this part, and to be eligible for the benefits and protection of this part. A person who elects to become subject to this part is liable for the fees for hail insurance and shall participate in the benefits and protection afforded by this part. The owners of lands worked by others under lease or contract or the lessee of land under lease or contract may make the election for hail insurance and may tender payment of the fee charged for hail insurance to the officer authorized to receive payment.

History: En. Sec. 5, Ch. 169, L. 1917; re-en. Sec. 356, R.C.M. 1921; re-en. Sec. 356, R.C.M. 1935; amd. Sec. 60, Ch. 391, L. 1973; R.C.M. 1947, 82-1512; amd. Sec. 5, Ch. 691, L. 1983; amd. Sec. 145, Ch. 27, Sp. L. November 1993; amd. Sec. 205, Ch. 574, L. 2001; amd. Sec. 2, Ch. 399, L. 2013.

Cross-References

County Assessor as agent of Department of Revenue, 15-8-102.

80-2-205. What crops subject to provisions of law. The crops grown on the lands of all persons who elect to become subject to this part must be insured under the provisions of this part for the acreage and the kind of crop for which fees for hail insurance have been imposed. The insurance must be provided for, determined, and adjusted and paid for as provided by this part.

History: En. Sec. 6, Ch. 169, L. 1917; re-en. Sec. 357, R.C.M. 1921; re-en. Sec. 357, R.C.M. 1935; R.C.M. 1947, 82-1513; amd. Sec. 206, Ch. 574, L. 2001.

80-2-206. Payment. When an applicant for hail insurance pays for the insurance at the time of application, the applicant is allowed a discount of 4%, less any transaction fees, and the insurance must be issued when the application and payment are received. All payments for hail insurance received by the department must be transferred to the state treasurer for deposit pursuant to 80-2-232.

History: En. Sec. 3, Ch. 40, L. 1923; amd. Sec. 3, Ch. 54, L. 1931; re-en. Sec. 350.2, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1943; R.C.M. 1947, 82-1503(2); amd. Sec. 146, Ch. 27, Sp. L. November 1993; amd. Sec. 207, Ch. 574, L. 2001; amd. Sec. 3, Ch. 399, L. 2013.

Cross-References

Collection of levies — release of lien, 80-2-230.

80-2-207. Delinquent fees — application by delinquent — crop lien. (1) An owner of land who is delinquent in paying fees pursuant to this part may not be allowed hail insurance under the provisions of this part unless the owner's application is accompanied by a payment for the delinquent amount, including interest imposed under 80-2-230, plus the amount that would be due on the application for that year.

(2) Any grower who is unable to secure state hail insurance under the provisions of this part because of delinquent fees or for other reasons may make an application to the department, and the department may accept the application when the applicant furnishes a sufficient crop lien that is subject only to a seed lien. The crop lien may be accepted only under rules prescribed by the board of hail insurance and under the provision that the board may cancel any hail insurance accepted in violation of the rules. Upon receipt of the application, the department shall make a record of the application and shall file the lien with the secretary of state. The department shall also send a bill to the grower for the proper amount due for hail insurance under the provisions of this part.

(3) A tenant who has delinquent hail insurance that was secured by a crop lien but not by real estate is not allowed another policy in any succeeding year until the delinquent amount, including interest imposed pursuant to 80-2-230, is paid.

(4) If a tenant becomes delinquent in paying for hail insurance after having failed to apply for relief as provided by the board under 80-2-229, the tenant may apply to the board for a reduction in the fee initially charged. If the reasons for requesting a reduction are approved by the board, the board may reduce the fee to not less than one-half the original amount charged.

History: (1) thru (3)En. Sec. 3, Ch. 40, L. 1923; amd. Sec. 3, Ch. 54, L. 1931; re-en. Sec. 350.2, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1943; Sec. 82-1503, R.C.M. 1947; (4)En. Sec. 3, Ch. 169, L. 1917; amd. Sec. 4, Ch. 34, L. 1919; re-en. Sec. 354, R.C.M. 1921; amd. Sec. 6, Ch. 40, L. 1923; re-en. Sec. 354, R.C.M. 1935; amd. Sec. 2, Ch. 37, L. 1943; Sec. 82-1509, R.C.M. 1947; R.C.M. 1947, 82-1503(1), (3), 82-1509(part); amd. Sec. 147, Ch. 27, Sp. L. November 1993; amd. Sec. 208, Ch. 574, L. 2001; amd. Sec. 2, Ch. 275, L. 2007; amd. Sec. 4, Ch. 399, L. 2013.

Cross-References

Taxation provisions — tax exemption provisions, 15-6-201, 15-6-206, 15-6-207.

Taxation provisions — agricultural appraisal — valuation of land as agricultural, Title 15, ch. 7, part 2.

Taxation provisions — market value standard — valuation exception for agricultural implements and machinery, 15-8-111.

Financial obligations — obligations on "seed loans" — County Treasurers' lists of delinquent loans, 15-16-701.

Taxation provisions — individual income tax exceptions for farmers and ranchers, 15-30-2512.

Taxation provisions — corporate income tax exemption for agricultural and horticultural organizations, 15-31-102.

Taxation provisions — gasoline and special fuel taxes, Title 15, ch. 70, part 4.

Agricultural liens — threshers' liens, 71-3-124; Title 71, ch. 3, part 8.

Agricultural liens — farm laborers' liens, Title 71, ch. 3, part 4.

Agricultural liens — crop liens for seed or grain and liens for hail insurance, Title 71, ch. 3, part 7.

Agricultural liens — agisters' liens and liens for service, Title 71, ch. 3, part 12.

Hail insurance secured by crop lien only, 80-2-227.

Hail insurance — payment of losses, 80-2-244.

80-2-208. Maximum insurance. The board may write not more than $75 of insurance on each acre of crops on nonirrigated land and not more than $114 of insurance on each acre on irrigated land, except that the board may specify different maximums for specialty crops. When more than one party desires hail insurance on the same crop, each party is entitled to the share of the maximum provided on each acre as represented by that person's interest in the crop. Any party may insure the party's share in the crop for any amount up to and including the maximum on each acre if the other parties waive their right to insure.

History: En. Sec. 2, Ch. 40, L. 1923; re-en. Sec. 350.1, R.C.M. 1935; amd. Sec. 1, Ch. 33, L. 1949; amd. Sec. 1, Ch. 200, L. 1953; amd. Sec. 1, Ch. 154, L. 1975; amd. Sec. 31, Ch. 13, L. 1977; R.C.M. 1947, 82-1502; amd. Sec. 1, Ch. 97, L. 2003; amd. Sec. 3, Ch. 275, L. 2007; amd. Sec. 1, Ch. 242, L. 2013; amd. Sec. 5, Ch. 399, L. 2013.

80-2-209. Reinsurance. Because of the unusual or unexpected variation in the severity of damage to crops that occurs from year to year and in order to enable the hail insurance board to spread the effect of these variations more evenly over all years, the board may negotiate for and secure reinsurance of a part of the risk in any year when the need for reinsurance appears advisable to the board. The board may use money from hail insurance fees for the purchase of reinsurance whenever it appears to the board that reinsurance is necessary and advisable.

History: En. Sec. 3, Ch. 37, L. 1943; amd. Sec. 74, Ch. 147, L. 1963; R.C.M. 1947, 82-1505; amd. Sec. 209, Ch. 574, L. 2001; amd. Sec. 4, Ch. 275, L. 2007.

80-2-210 through 80-2-219 reserved.

80-2-220. Rules — hail insurance fees. The department and the board of hail insurance shall adopt rules necessary for the administration and collection of hail insurance fees pursuant to this part.

History: En. Sec. 15, Ch. 399, L. 2013.

80-2-221. Fee for hail insurance. (1) A fee is imposed on all land in this state growing crops subject to injury or destruction by hail if the owners of the land have elected to become subject to the provisions of this part.

(2) The board of hail insurance shall annually estimate, as accurately as possible, the amount required to pay all losses, interest on warrants, and costs of administration and shall recommend to the department a fee to be imposed on each kind of land subject to the provisions of this part. The rates recommended to apply on the land must be applied in the same proportions to the crops of those landowners insured on a personal basis.

History: En. Sec. 2, Ch. 169, L. 1917; amd. Sec. 1, Ch. 34, L. 1919; amd. Sec. 2, Ch. 141, L. 1921; re-en. Sec. 351, R.C.M. 1921; amd. Sec. 4, Ch. 40, L. 1923; amd. Sec. 1, Ch. 54, L. 1931; re-en. Sec. 351, R.C.M. 1935; amd. Sec. 2, Ch. 33, L. 1949; amd. Sec. 2, Ch. 200, L. 1953; amd. Sec. 59, Ch. 391, L. 1973; amd. Sec. 2, Ch. 154, L. 1975; amd. Sec. 32, Ch. 13, L. 1977; R.C.M. 1947, 82-1506(1); amd. Sec. 1, Ch. 20, L. 1979; amd. Sec. 6, Ch. 691, L. 1983; amd. Sec. 210, Ch. 574, L. 2001; amd. Sec. 6, Ch. 399, L. 2013.

80-2-222. Board to establish amount of rates — disposition of funds. (1) The board of hail insurance may, when it considers it advisable, establish as many districts as it considers advisable and may maintain maximum rates in various parts of the state. The rates must be commensurate with the risk incurred as nearly as it can determine from past experiences or from any records available.

(2) Notice of the various rates established for any year must be plainly printed on the application for hail insurance, and the rates for the year must be determined and imposed by the board of hail insurance for each of the various districts as established, in proportions that will in the board's judgment be fair and equitable.

(3) The department may accept and expend all funds received by it, including amounts repaid as principal and interest on investments. The funds are statutorily appropriated, as provided in 17-7-502, to the board of hail insurance for the purposes of this chapter. Expenditures for actual and necessary expenses required for the efficient administration of this part must be made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose.

(4) In establishing the rates provided in this section, the board of hail insurance shall provide for:

(a) the payment of all expenses of administration, together with all interest owed or to be owing on registered warrants;

(b) that portion of the losses incurred during the current year that are not paid from funds drawn from the reserve;

(c) the maintenance of the reserve, a part or all of which may be used in any 1 year for the purpose of paying the costs of administration, interest on the warrants, and losses as settled and adjusted by the board, including the losses sustained in any prior year or years under the hail insurance law that have not been paid.

(5) If at the end of any hail insurance season the board determines that more funds are accumulating from the current year's rates than were estimated when the rates were established and are in excess of the need for the payment of losses and expenses and maintenance of the reserve, the board may, at its discretion, refund the excess to the persons insured for the year on a pro rata or percentage basis.

(6) The board of hail insurance may direct the board of investments to invest funds from the enterprise fund pursuant to the provisions of the unified investment program for state funds. The income from the investments must be credited to the board of hail insurance account in the enterprise fund.

History: (1), (2)En. Sec. 2, Ch. 169, L. 1917; amd. Sec. 1, Ch. 34, L. 1919; amd. Sec. 2, Ch. 141, L. 1921; re-en. Sec. 351, R.C.M. 1921; amd. Sec. 4, Ch. 40, L. 1923; amd. Sec. 1, Ch. 54, L. 1931; re-en. Sec. 351, R.C.M. 1935; amd. Sec. 2, Ch. 33, L. 1949; amd. Sec. 2, Ch. 200, L. 1953; amd. Sec. 59, Ch. 391, L. 1973; amd. Sec. 2, Ch. 154, L. 1975; amd. Sec. 32, Ch. 13, L. 1977; Sec. 82-1506, R.C.M. 1947; (3) thru (5)En. Sec. 2, Ch. 34, L. 1919; re-en. Sec. 352, R.C.M. 1921; amd. Sec. 5, Ch. 40, L. 1923; amd. Sec. 1, Ch. 8, L. 1929; re-en. Sec. 352, R.C.M. 1935; amd. Sec. 3, Ch. 200, L. 1953; amd. Sec. 1, Ch. 20, L. 1957; amd. Sec. 73, Ch. 147, L. 1963; amd. Sec. 3, Ch. 154, L. 1975; amd. Sec. 3, Ch. 16, L. 1977; Sec. 82-1507, R.C.M. 1947; R.C.M. 1947, 82-1506(4), (5), 82-1507(1), (2), (7); amd. Sec. 39, Ch. 281, L. 1983; amd. Sec. 7, Ch. 691, L. 1983; amd. Sec. 1, Ch. 69, L. 1993; amd. Sec. 211, Ch. 574, L. 2001; amd. Sec. 7, Ch. 399, L. 2013.

Cross-References

Taxation provisions — tax exemption provisions, 15-6-201, 15-6-206, 15-6-207.

Taxation provisions — agricultural appraisal — valuation of land as agricultural, Title 15, ch. 7, part 2.

Taxation provisions — individual income tax exceptions for farmers and ranchers, 15-30-2512.

Taxation provisions — corporate income tax exemption for agricultural and horticultural organizations, 15-31-102.

Taxation provisions — gasoline and special fuel taxes, Title 15, ch. 70, part 4.

Payment for losses from hailstorms, 80-2-244.

80-2-223. Repealed. Sec. 253, Ch. 574, L. 2001.

History: En. Sec. 2, Ch. 169, L. 1917; amd. Sec. 1, Ch. 34, L. 1919; amd. Sec. 2, Ch. 141, L. 1921; re-en. Sec. 351, R.C.M. 1921; amd. Sec. 4, Ch. 40, L. 1923; amd. Sec. 1, Ch. 54, L. 1931; re-en. Sec. 351, R.C.M. 1935; amd. Sec. 2, Ch. 33, L. 1949; amd. Sec. 2, Ch. 200, L. 1953; amd. Sec. 59, Ch. 391, L. 1973; amd. Sec. 2, Ch. 154, L. 1975; amd. Sec. 32, Ch. 13, L. 1977; R.C.M. 1947, 82-1506(part).

80-2-224. Fee — notice — when payable. No later than November 1, the department shall notify each person insured of the amount of the fee due for hail insurance and that the fee must be paid to the department by November 30.

History: En. Sec. 2, Ch. 169, L. 1917; amd. Sec. 1, Ch. 34, L. 1919; amd. Sec. 2, Ch. 141, L. 1921; re-en. Sec. 351, R.C.M. 1921; amd. Sec. 4, Ch. 40, L. 1923; amd. Sec. 1, Ch. 54, L. 1931; re-en. Sec. 351, R.C.M. 1935; amd. Sec. 2, Ch. 33, L. 1949; amd. Sec. 2, Ch. 200, L. 1953; amd. Sec. 59, Ch. 391, L. 1973; amd. Sec. 2, Ch. 154, L. 1975; amd. Sec. 32, Ch. 13, L. 1977; R.C.M. 1947, 82-1506(part); amd. Sec. 8, Ch. 691, L. 1983; amd. Sec. 212, Ch. 574, L. 2001; amd. Sec. 8, Ch. 399, L. 2013.

80-2-225. Real estate lien — creation. The hail insurance fees chargeable to the lands of each person who elects to become subject to this part must be collected by the department. If the fees are not paid, they are a lien on the lands against which they are imposed.

History: En. Sec. 2, Ch. 169, L. 1917; amd. Sec. 1, Ch. 34, L. 1919; amd. Sec. 2, Ch. 141, L. 1921; re-en. Sec. 351, R.C.M. 1921; amd. Sec. 4, Ch. 40, L. 1923; amd. Sec. 1, Ch. 54, L. 1931; re-en. Sec. 351, R.C.M. 1935; amd. Sec. 2, Ch. 33, L. 1949; amd. Sec. 2, Ch. 200, L. 1953; amd. Sec. 59, Ch. 391, L. 1973; amd. Sec. 2, Ch. 154, L. 1975; amd. Sec. 32, Ch. 13, L. 1977; R.C.M. 1947, 82-1506(part); amd. Sec. 148, Ch. 27, Sp. L. November 1993; amd. Sec. 213, Ch. 574, L. 2001; amd. Sec. 9, Ch. 399, L. 2013.

Cross-References

Liens on real estate, Title 71, ch. 3, part 13.

80-2-226. Repealed. Sec. 16, Ch. 399, L. 2013.

History: En. Sec. 2, Ch. 169, L. 1917; amd. Sec. 1, Ch. 34, L. 1919; amd. Sec. 2, Ch. 141, L. 1921; re-en. Sec. 351, R.C.M. 1921; amd. Sec. 4, Ch. 40, L. 1923; amd. Sec. 1, Ch. 54, L. 1931; re-en. Sec. 351, R.C.M. 1935; amd. Sec. 2, Ch. 33, L. 1949; amd. Sec. 2, Ch. 200, L. 1953; amd. Sec. 59, Ch. 391, L. 1973; amd. Sec. 2, Ch. 154, L. 1975; amd. Sec. 32, Ch. 13, L. 1977; R.C.M. 1947, 82-1506(part); amd. Sec. 214, Ch. 574, L. 2001.

80-2-227. Hail insurance secured by crop lien only. When any hail insurance issued under this part is secured by a crop lien only, the crop lien is a first lien on the insured crop, except for any crop lien that may have been given to secure the purchase price for the seed that was bought and used to plant and produce the insured crop.

History: En. Sec. 3, Ch. 37, L. 1943; R.C.M. 1947, 82-1504; amd. Sec. 5, Ch. 275, L. 2007.

Cross-References

Delinquent taxes — application by delinquent — crop lien, 80-2-207.

80-2-228. Reserve fund. (1) Each year when the hail board sets its annual fee for the payment of current losses, for expenses of administration, and for an addition to the reserve if conditions permit, it may not increase the fee enough in any year so that the addition to the reserve will exceed 5% of the maximum risk written for that year.

(2) The board may engage the services of a qualified actuary to conduct an actuarial valuation of the reserve. This valuation may include the actuary's determination of the amount of reserve necessary to absorb all reasonably anticipated catastrophic losses. This amount is the maximum permissible reserve fund for the next year.

(3) The reserve must be deposited in an enterprise fund.

(4) The board may not draw on the reserve for any purpose unless the amount required for the payment of losses for the current year, including interest on warrants and costs of administration, exceeds the amount of the estimate made by the board for the current year pursuant to 80-2-221.

History: En. Sec. 2, Ch. 34, L. 1919; re-en. Sec. 352, R.C.M. 1921; amd. Sec. 5, Ch. 40, L. 1923; amd. Sec. 1, Ch. 8, L. 1929; re-en. Sec. 352, R.C.M. 1935; amd. Sec. 3, Ch. 200, L. 1953; amd. Sec. 1, Ch. 20, L. 1957; amd. Sec. 73, Ch. 147, L. 1963; amd. Sec. 3, Ch. 154, L. 1975; amd. Sec. 3, Ch. 16, L. 1977; R.C.M. 1947, 82-1507(3) thru (6); amd. Sec. 40, Ch. 281, L. 1983; amd. Sec. 9, Ch. 691, L. 1983; amd. Sec. 34, Ch. 703, L. 1985; amd. Sec. 12, Ch. 628, L. 1989; amd. Sec. 2, Ch. 69, L. 1993; amd. Sec. 215, Ch. 574, L. 2001.

80-2-229. Withdrawal of crop in case of destruction through other means. When any crop insured under this part is destroyed by any other cause than hail, the applicant may, by furnishing the proof required by the board of hail insurance, cause the crop to be exempted from the regular fee of the board for the current year. The proof must be submitted to the board of hail insurance in accordance with its rules. The rules must be plainly printed on the applications and policies issued by the department. The rules must provide that the cost for withdrawn insurance must be varied as nearly as practical according to the time the insurance is in force and according to the risk carried.

History: En. Sec. 3, Ch. 34, L. 1919; amd. Sec. 3, Ch. 141, L. 1921; re-en. Sec. 353, R.C.M. 1921; amd. Sec. 2, Ch. 54, L. 1931; re-en. Sec. 353, R.C.M. 1935; R.C.M. 1947, 82-1508; amd. Sec. 216, Ch. 574, L. 2001.

80-2-230. Collection of fees — release of lien — interest. (1) The department shall collect all fees imposed under this part and transfer the money collected to the state treasurer for deposit pursuant to 80-2-232. The department shall use due diligence in collecting the fees provided for in this part.

(2) All insurance fees are payable in full on or before November 30 of each year in which the fees are imposed.

(3) When the amount due on any hail insurance secured by a lien is paid, the department shall promptly endorse on the lien the amount paid and the date of payment. The endorsement is considered a satisfaction and release of the lien.

(4) The department shall impose interest for late payments of fees imposed under this part at the rate of 2% a month or fraction of a month on the unpaid fees. The interest imposed under this subsection accrues daily on all unpaid fees from the date on which the fees were originally due.

History: (1), (3)En. Sec. 3, Ch. 169, L. 1917; amd. Sec. 4, Ch. 34, L. 1919; re-en. Sec. 354, R.C.M. 1921; amd. Sec. 6, Ch. 40, L. 1923; re-en. Sec. 354, R.C.M. 1935; amd. Sec. 2, Ch. 37, L. 1943; Sec. 82-1509, R.C.M. 1947; (2) En. Sec. 2, Ch. 169, L. 1917; amd. Sec. 1, Ch. 34, L. 1919; amd. Sec. 2, Ch. 141, L. 1921; re-en. Sec. 351, R.C.M. 1921; amd. Sec. 4, Ch. 40, L. 1923; amd. Sec. 1, Ch. 54, L. 1931; re-en. Sec. 351, R.C.M. 1935; amd. Sec. 2, Ch. 33, L. 1949; amd. Sec. 2, Ch. 200, L. 1953; amd. Sec. 59, Ch. 391, L. 1973; amd. Sec. 2, Ch. 154, L. 1975; amd. Sec. 32, Ch. 13, L. 1977; Sec. 82-1506, R.C.M. 1947; R.C.M. 1947, 82-1506(part), 82-1509(part); amd. Sec. 41, Ch. 257, L. 2001; amd. Sec. 217, Ch. 574, L. 2001; amd. Sec. 24, Ch. 13, Sp. L. August 2002; amd. Sec. 10, Ch. 399, L. 2013.

Cross-References

Cash payment — discount, 80-2-206.

80-2-231. Repealed. Sec. 16, Ch. 399, L. 2013.

History: En. Sec. 7, Ch. 40, L. 1923; re-en. Sec. 354.1, R.C.M. 1935; amd. Sec. 3, Ch. 33, L. 1949; R.C.M. 1947, 82-1510; amd. Sec. 218, Ch. 574, L. 2001; amd. Sec. 6, Ch. 275, L. 2007.

80-2-232. Department's duty — warrants — transfers to state general fund. (1) The department shall transfer to the state treasurer all money collected under this part for deposit in the enterprise fund. All covered losses must be paid from the fund.

(2) (a) All costs other than covered losses are administrative expenses and must be paid from the enterprise fund.

(b) If registered warrants are presented and there is no money to pay the warrants, the warrants must be registered and bear interest at the rate of 4% a year until called for payment by the state treasurer.

(3) Upon authorization from the board of hail insurance, the department shall transfer from the enterprise fund to the state general fund 1.5% of the hail insurance premiums collected during the calendar year not to exceed $100,000.

History: En. Sec. 4, Ch. 169, L. 1917; amd. Sec. 1, Ch. 183, L. 1921; re-en. Sec. 355, R.C.M. 1921; amd. Sec. 8, Ch. 40, L. 1923; re-en. Sec. 355, R.C.M. 1935; amd. Sec. 1, Ch. 189, L. 1961; amd. Sec. 75, Ch. 147, L. 1963; R.C.M. 1947, 82-1511; amd. Sec. 41, Ch. 281, L. 1983; amd. Sec. 10, Ch. 691, L. 1983; amd. Sec. 3, Ch. 69, L. 1993; amd. Sec. 219, Ch. 574, L. 2001; amd. Sec. 11, Ch. 399, L. 2013.

80-2-233 through 80-2-240 reserved.

80-2-241. Report of losses. All losses by hail to crops insured under this part must be reported within 14 days after the loss by the owner of the crops or by the owner's agent or attorney to the board of hail insurance. The board shall require the claimant to make a statement of the losses sustained, the cause of the losses, and other information that the board may require on the forms to be provided for that purpose. If a loss is reported more than 14 days after it occurs, the board shall charge the claimant for all costs incurred in making the adjustment.

History: En. Sec. 7, Ch. 169, L. 1917; re-en. Sec. 358, R.C.M. 1921; amd. Sec. 9, Ch. 40, L. 1923; re-en. Sec. 358, R.C.M. 1935; R.C.M. 1947, 82-1514; amd. Sec. 11, Ch. 691, L. 1983; amd. Sec. 2573, Ch. 56, L. 2009.

80-2-242. Adjusters — appointment — qualifications — duties. (1) The department shall retain a sufficient number of adjusters to appraise all losses by hail that are covered by hail insurance under this part.

(2) The department may call on one or more of the adjusters to appraise each loss, and the adjusters shall promptly report their findings to the department according to the rules adopted by the board.

(3) An adjuster who is a relative, attorney, agent, employee, or creditor of a person incurring a crop loss due to hail and subject to insurance coverage under this part or who has an interest in a lien or mortgage on the crop injured or destroyed may not appraise or assist in appraising the loss.

History: En. Sec. 8, Ch. 169, L. 1917; amd. Sec. 5, Ch. 34, L. 1919; amd. Sec. 4, Ch. 141, L. 1921; re-en. Sec. 359, R.C.M. 1921; re-en. Sec. 359, R.C.M. 1935; amd. Sec. 1, Ch. 79, L. 1973; R.C.M. 1947, 82-1515; amd. Sec. 12, Ch. 691, L. 1983; amd. Sec. 12, Ch. 399, L. 2013.

80-2-243. Disputed appraisal. (1) If the party that has sustained the loss is dissatisfied with and refuses to accept the appraisal made by the official adjuster, the party has the right to appeal to the board of hail insurance. The party shall make the appeal within 10 days after receiving the appraisal. The board of hail insurance shall arrange for a second appraisal by another adjuster.

(2) If the adjuster who makes a second appraisal pursuant to the appeal fails to secure an agreement, the claimant may submit the matter to arbitration as provided in this subsection or sue the board in the district court of the county where the loss occurred, within 90 days from the date of receipt of written notice of the second appraisal. The actions must be trials de novo and the Montana Rules of Civil Procedure apply. If the claimant elects to submit the matter to arbitration, the claimant shall then appoint one disinterested person as an adjuster, the official adjuster shall appoint another person as an adjuster, the two shall select a third disinterested person as an adjuster, and the three shall then proceed to appraise the loss in the same manner as specified in 80-2-242. The judgment of the majority is the judgment of the adjusters and is binding upon both parties as the final determination of the loss.

(3) (a) If the insured does not recover a greater sum than allowed by the adjuster in the first instance, the insured shall pay the expenses of the three adjusters and their witnesses in making the appraisal, but if the insured is awarded a larger sum, the expenses must be paid by the department.

(b) If the insured is required to pay the expenses of the reappraisal as provided in subsection (3)(a), the department may deduct the amount of the expenses from the amount allowed the insured before making settlement for the loss.

(4) The department or the board shall examine all reports of adjusters and verify the reports and adjust all losses and for those purposes may order hearings, subpoena witnesses, conduct examinations, and do all things necessary to secure a fair and impartial appraisal of losses by hail.

History: **En. Sec. 9, Ch. 169, L. 1917; amd. Sec. 6, Ch. 34, L. 1919; re-en. Sec. 360, R.C.M. 1921; amd. Sec. 10, Ch. 40, L. 1923; re-en. Sec. 360, R.C.M. 1935; amd. Sec. 4, Ch. 33, L. 1949; amd. Sec. 1, Ch. 69, L. 1963; amd. Sec. 76, Ch. 147, L. 1963; amd. Sec. 1, Ch. 170, L. 1967; R.C.M. 1947, 82-1516; amd. Sec. 13, Ch. 691, L. 1983; amd. Sec. 2574, Ch. 56, L. 2009; amd. Sec. 13, Ch. 399, L. 2013.**

80-2-244. Payment of losses. (1) The department shall, as soon as practicable after the loss has been sustained, arrange for the payment of the loss in the following manner. From the amount of the loss as adjusted for each claimant, the department shall deduct the amount that the claimant then owes as a delinquent hail insurance fee and the maximum amount assessed as a hail insurance fee for the current year.

(2) The department shall on or before November 1 order payment for the balance of the adjustment to be sent to the claimant, provided that the payment for loss may not exceed the maximum amounts established in 80-2-208. A claimant may not receive payment for any loss incurred if the loss does not equal or exceed 5% of the total value of the crop insured. If the losses in any year exceed the current fees plus the reserve, then the payment of all losses must be prorated among all growers having loss claims adjusted and approved, and the unpaid balance of the losses must be paid out of the reserve without interest in the order that the department directs when, in the judgment of the department, there is sufficient money to provide for the payment of the claims and other items payable out of the reserve.

History: **En. Sec. 10, Ch. 169, L. 1917; amd. Sec. 7, Ch. 34, L. 1919; amd. Sec. 5, Ch. 141, L. 1921; re-en. Sec. 361, R.C.M. 1921; amd. Sec. 11, Ch. 40, L. 1923; amd. Sec. 2, Ch. 8, L. 1929; re-en. Sec. 361, R.C.M. 1935; amd. Sec. 5, Ch. 33, L. 1949; amd. Sec. 4, Ch. 200, L. 1953; amd. Sec. 77, Ch. 147, L. 1963; amd. Sec. 4, Ch. 154, L. 1975; amd. Sec. 33, Ch. 13, L. 1977; R.C.M. 1947, 82-1517; amd. Sec. 14, Ch. 691, L. 1983; amd. Sec. 220, Ch. 574, L. 2001; amd. Sec. 2, Ch. 97, L. 2003; amd. Sec. 7, Ch. 275, L. 2007; amd. Sec. 14, Ch. 399, L. 2013.**

Cross-References

Effect of delinquent taxes, 80-2-207.

Disposition of hail insurance funds, 80-2-222.

80-2-245. Benefits exempt from execution. All money or benefits received from hail insurance are exempt from execution, are not liable to attachment, and may not be seized, taken, or appropriated by any local process to pay any debt or liability of the insured unless the amount is assigned and then for no more than the amount of the claim intended to be secured by the assignment, with lawful interest.

History: En. Sec. 13, Ch. 40, L. 1923; re-en. Sec. 363.1, R.C.M. 1935; R.C.M. 1947, 82-1520; amd. Sec. 2, Ch. 20, L. 1979.

Cross-References

Exempt property — bankruptcy proceeding, 31-2-106.

Part 3
Plant Sampling

80-2-301. Plant sampling provided — fees — rulemaking authority. (1) In a dispute in which a plant sample would serve a useful purpose to clarify, quantify, or settle the dispute, either party may file with the department a request that the department provide sampling services.

(2) The department shall charge a fee that covers the costs of providing the sampling service. Costs associated with sampling must be paid by the person who requested the sampling unless:

(a) both parties agree to a different assignment of costs through a contractual or settlement agreement; or

(b) a different allocation has been ordered through mediation or a court order.

(3) The department shall adopt rules to implement this section.

History: En. Sec. 1, Ch. 33, L. 2015.

CHAPTER 3
PRODUCE

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80-3-322. Revocation, suspension, and nonrenewal of license.
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Part 4 reserved

Part 5 — Bean Storage (Repealed)

Part 6 — Produce Wholesalers (Repealed)

Part 7 — Itinerant Merchants (Repealed)

Chapter Cross-References

Department of Agriculture and special levies created, Art. XII, sec. 1, Mont. Const.

Public markets, Title 7, ch. 21, part 33.

City to weigh and inspect grain and hay, 7-21-4203.

Taxation provisions — tax exemption provisions, 15-6-201, 15-6-206, 15-6-207.

Taxation provisions — agricultural appraisal — valuation of land as agricultural, Title 15, ch. 7, part 2.

Land use — Realty Transfer Act — exceptions for agricultural lands, 15-7-307.

Land use — assessment rates for agricultural lands — market value standard — valuation exception for agricultural implements and machinery, 15-8-111.

Financial obligations — obligations on "seed loans" — County Treasurers' lists of delinquent loans, 15-16-701.

Taxation provisions — individual income tax exceptions for farmers and ranchers, 15-30-2512.

Taxation provisions — corporate income tax exemption for agricultural and horticultural organizations, 15-31-102.

Taxation provisions — gasoline and special fuel taxes, Title 15, ch. 70, part 4.

U.C.C. — warehouse receipts, bills of lading, and other shipping documents, Title 30, ch. 7.

Weight and measure of berries and small fruits, 30-12-408.

Cooperative agricultural associations, Title 35, ch. 16.

Cooperative agricultural marketing, Title 35, ch. 17.

Montana Food, Drug, and Cosmetic Act — when food adulterated, Title 50, ch. 31, part 1; 50-31-202.

Agricultural vehicle provisions — exemption of farm implements from certain identification requirements, 61-3-431, 69-12-408.

Agricultural vehicle provisions — motor vehicle license exemption for tractor drivers, 61-5-104, 61-8-101.

Agricultural vehicle provisions — exceptions to equipment requirements, 61-9-109, 61-9-215, 61-9-406, 61-10-102, 61-10-122, 61-10-123.

Agricultural vehicle provisions — slow-moving vehicles — equipment requirements, 61-9-415.

Agricultural vehicle provisions — special fees for certain farm vehicles, 61-10-206.

Land use — relocation of power lines upon installation of agricultural improvements — sprinkler irrigation systems, Title 69, ch. 4, part 4.

Grain and commodity storage and transportation, Title 69, ch. 14, part 9.

Suitable railroad cars to be furnished for grain or other bulk commodity shipments, 69-14-921.

Land use — relocation of farm persons displaced when land condemned, Title 70, ch. 31, part 1 and 3.

Agricultural liens — threshers' liens, 71-3-124; Title 71, ch. 3, part 8.

Agricultural liens — farm laborers' liens, Title 71, ch. 3, part 4.

Agricultural liens — crop liens for seed or grain and liens for hail insurance, Title 71, ch. 3, part 7.

Agricultural liens — agisters' liens and liens for service, Title 71, ch. 3, part 12.

Land use — land use planning boards, Title 76, ch. 1.

Land use — local regulation of subdivisions — agriculture-related provisions, 76-3-207, 76-3-401, 76-3-608.

Land use — state lands classification, Title 77, ch. 1, part 4.

Land use — conflicting or harmonious leasing of state lands for mining and agricultural purposes, 77-3-104, 77-3-120, 77-3-207.

Agricultural loans — loan guaranty program — fund, 80-12-215, 80-12-216.

Marketing — export assistance, Title 90, ch. 9, part 4.

Part 1
Standard Grades and Brands
(Repealed)

80-3-101. Repealed. Sec. 15, Ch. 553, L. 1993.

History: En. Sec. 2, Ch. 165, L. 1933; re-en. Sec. 3633.2, R.C.M. 1935; amd. Sec. 2, Ch. 79, L. 1969; amd. Sec. 74, Ch. 218, L. 1974; R.C.M. 1947, 3-1402.

80-3-102. Repealed. Sec. 15, Ch. 553, L. 1993.

History: En. Sec. 9, Ch. 165, L. 1933; re-en. Sec. 3633.9, R.C.M. 1935; amd. Sec. 8, Ch. 79, L. 1969; R.C.M. 1947, 3-1409.

80-3-103. Repealed. Sec. 15, Ch. 553, L. 1993.

History: Ap. p. Sec. 1, Ch. 165, L. 1933; re-en. Sec. 3633.1, R.C.M. 1935; amd. Sec. 1, Ch. 79, L. 1969; Sec. 3-1401, R.C.M. 1947; Ap. p. Sec. 4, Ch. 165, L. 1933; re-en. Sec. 3633.4, R.C.M. 1935; amd. Sec. 1, Ch. 71, L. 1937; amd. Sec. 1, Ch. 30, L. 1963; amd. Sec. 4, Ch. 79, L. 1969; amd. Sec. 76, Ch. 218, L. 1974; Sec. 3-1404, R.C.M. 1947; R.C.M. 1947, 3-1401, 3-1404(6).

80-3-104. Repealed. Sec. 15, Ch. 553, L. 1993.

History: En. Sec. 3, Ch. 165, L. 1933; re-en. Sec. 3633.3, R.C.M. 1935; amd. Sec. 3, Ch. 79, L. 1969; amd. Sec. 75, Ch. 218, L. 1974; R.C.M. 1947, 3-1403.

80-3-105. Repealed. Sec. 15, Ch. 553, L. 1993.

History: En. Sec. 4, Ch. 165, L. 1933; re-en. Sec. 3633.4, R.C.M. 1935; amd. Sec. 1, Ch. 71, L. 1937; amd. Sec. 1, Ch. 30, L. 1963; amd. Sec. 4, Ch. 79, L. 1969; amd. Sec. 76, Ch. 218, L. 1974; R.C.M. 1947, 3-1404(1) thru (5), (7).

80-3-106. Repealed. Sec. 15, Ch. 553, L. 1993.

History: En. Sec. 5, Ch. 165, L. 1933; re-en. Sec. 3633.5, R.C.M. 1935; amd. Sec. 5, Ch. 79, L. 1969; amd. Sec. 16, Ch. 13, L. 1977; R.C.M. 1947, 3-1405.

80-3-107. Repealed. Sec. 15, Ch. 553, L. 1993.

History: En. Sec. 1, Ch. 46, L. 1935; re-en. Sec. 3633.11, R.C.M. 1935; R.C.M. 1947, 3-1411.

80-3-108. Repealed. Sec. 15, Ch. 553, L. 1993.

History: En. Sec. 6, Ch. 165, L. 1933; re-en. Sec. 3633.6, R.C.M. 1935; amd. Sec. 6, Ch. 79, L. 1969; amd. Sec. 17, Ch. 13, L. 1977; R.C.M. 1947, 3-1406.

80-3-109. Repealed. Sec. 15, Ch. 553, L. 1993.
History: En. Sec. 7, Ch. 165, L. 1933; re-en. Sec. 3633.7, R.C.M. 1935; amd. Sec. 7, Ch. 79, L. 1969; amd. Sec. 77, Ch. 218, L. 1974; R.C.M. 1947, 3-1407.

80-3-110. Repealed. Sec. 15, Ch. 553, L. 1993.
History: En. Sec. 8, Ch. 165, L. 1933; re-en. Sec. 3633.8, R.C.M. 1935; amd. Sec. 78, Ch. 218, L. 1974; amd. Sec. 3, Ch. 155, L. 1975; R.C.M. 1947, 3-1408; amd. Sec. 187, Ch. 575, L. 1981.

80-3-111. Repealed. Sec. 15, Ch. 553, L. 1993.
History: (1)En. Sec. 10, Ch. 165, L. 1933; re-en. Sec. 3633.10, R.C.M. 1935; amd. Sec. 9, Ch. 79, L. 1969; amd. Sec. 79, Ch. 218, L. 1974; Sec. 3-1410, R.C.M. 1947; (2)En. Sec. 2, Ch. 46, L. 1935; re-en. Sec. 3633.12, R.C.M. 1935; Sec. 3-1412, R.C.M. 1947; R.C.M. 1947, 3-1410, 3-1412.

Part 2
Apples — Inspection, Grading, and Packing (Repealed)

80-3-201. Repealed. Sec. 15, Ch. 553, L. 1993.
History: En. Sec. 55, Ch. 216, L. 1921; re-en. Sec. 3630, R.C.M. 1921; re-en. Sec. 3630, R.C.M. 1935; Sec. 3-1305, R.C.M. 1947; amd. and redes. 3-3401 by Sec. 70, Ch. 218, L. 1974; R.C.M. 1947, 3-3401; amd. Sec. 3, Ch. 25, L. 1987.

80-3-202. Repealed. Sec. 15, Ch. 553, L. 1993.
History: En. Sec. 1, Ch. 138, L. 1931; amd. Sec. 1, Ch. 1, L. 1933; amd. Sec. 1, Ch. 39, L. 1935; re-en. Sec. 4265.1, R.C.M. 1935; amd. Sec. 1, Ch. 89, L. 1939; amd. Sec. 1, Ch. 43, L. 1951; amd. Sec. 1, Ch. 127, L. 1971; Sec. 90-201, R.C.M. 1947; amd. and redes. 3-3402 by Sec. 172, Ch. 218, L. 1974; amd. Sec. 26, Ch. 13, L. 1977; R.C.M. 1947, 3-3402.

80-3-203. Repealed. Sec. 15, Ch. 553, L. 1993.
History: En. Sec. 2, Ch. 138, L. 1931; re-en. Sec. 4265.2, R.C.M. 1935; Sec. 90-202, R.C.M. 1947; redes. 3-3403 by Sec. 172, Ch. 218, L. 1974; R.C.M. 1947, 3-3403.

80-3-204. Repealed. Sec. 15, Ch. 553, L. 1993.
History: En. Sec. 3, Ch. 138, L. 1931; amd. Sec. 2, Ch. 39, L. 1935; re-en. Sec. 4265.3, R.C.M. 1935; Sec. 90-203, R.C.M. 1947; amd. and redes. 3-3404 by Sec. 171, Ch. 218, L. 1974; R.C.M. 1947, 3-3404.

80-3-205. Repealed. Sec. 15, Ch. 553, L. 1993.
History: En. Sec. 4, Ch. 138, L. 1931; re-en. Sec. 4265.4, R.C.M. 1935; Sec. 90-204, R.C.M. 1947; redes. 3-3405 by Sec. 172, Ch. 218, L. 1974; R.C.M. 1947, 3-3405.

80-3-206. Repealed. Sec. 15, Ch. 553, L. 1993.
History: En. Sec. 5, Ch. 138, L. 1931; re-en. Sec. 4265.5, R.C.M. 1935; Sec. 90-205, R.C.M. 1947; redes. 3-3406 by Sec. 172, Ch. 218, L. 1974; R.C.M. 1947, 3-3406.

80-3-207. Repealed. Sec. 15, Ch. 553, L. 1993.
History: En. Sec. 6, Ch. 138, L. 1931; amd. Sec. 3, Ch. 39, L. 1935; re-en. Sec. 4265.6, R.C.M. 1935; Sec. 90-206, R.C.M. 1947; redes. 3-3407 by Sec. 172, Ch. 218, L. 1974; R.C.M. 1947, 3-3407.

80-3-208 through 80-3-210 reserved.

80-3-211. Repealed. Sec. 15, Ch. 553, L. 1993.
History: En. Sec. 1, Ch. 25, L. 1987.

80-3-212. Repealed. Sec. 15, Ch. 553, L. 1993.
History: En. Sec. 2, Ch. 25, L. 1987; amd. Sec. 1, Ch. 39, L. 1989.

Part 3
Montana Produce Act

80-3-301. Short title. This part may be cited as the "Montana Produce Act".
History: En. Sec. 1, Ch. 553, L. 1993.

80-3-302. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Aquaculture" means the commercial production of aquatic organisms under controlled conditions throughout part or all of their life cycle.

(2) "Aquaculture products" means articles used for human consumption produced by aquaculture. The term includes but is not limited to fish, shellfish, and aquatic plants.

(3) "Container" means any package, sack, box, crate, carton, basket, or other object used for the shipping of produce.

(4) (a) "Controlled conditions" means the management of water quality, feed, stocking density, and environmental parameters within an aquatic system to optimize the growth and health of farmed aquatic organisms. Controlled conditions include the conditions required by a controlled species permit or a prohibited species permit issued pursuant to Title 87, chapter 5, part 7.

(b) The term does not include a pond, lake, reservoir, river, ocean, or stream.

(5) "Director" means the director of agriculture appointed pursuant to 2-15-3001.

(6) "Person" means an individual, firm, association, corporation, partnership, or any other form of business enterprise.

(7) (a) "Produce" means any fruit, vegetable, aquaculture product, or other natural product designated by department rule.

(b) The term does not include livestock and its byproducts, poultry and its byproducts, apiary products, dairy products, or grain.

(8) "Produce dealer" means a person who engages in a business involving or who as part of a business participates in purchasing, exchanging, negotiating, or soliciting the sale, resale, exchange, or transfer of produce in this state, except vegetative seed potato products intended or used for planting purposes.

(9) "Produce unit" means the standard size container for a given type of produce. A produce unit may be established by department rule.

(10) "Retail" means sale of produce to the ultimate consumer.

(11) "Shipping point inspection" means an inspection of produce at the location from which it was shipped.

(12) "Stop sale order" means a written notice to hold produce from sale or movement until a violation has been resolved and the produce is released by the department.

(13) (a) "Wholesale" means the sale of produce intended for resale.

(b) The term does not include the sale of Montana-grown produce when sold by the Montana grower for purposes of resale or vegetative seed potato products intended or used for planting purposes.

History: En. Sec. 2, Ch. 553, L. 1993; amd. Sec. 4, Ch. 344, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 344, L. 2025. Amendment effective May 1, 2025.

80-3-303. Powers and duties of department. (1) The department may:

(a) enter a premises at any reasonable time to inspect produce for condition, for grade, for determining compliance with the provisions of this part, or for compliance with the FDA Food Safety Modernization Act, 21 U.S.C. 2201, et seq.; and

(b) cooperate with and enter into agreements with governmental agencies of this state, agencies of other states, agencies of the U.S. government, and private associations, in furtherance of this part.

(2) (a) The department shall adopt rules necessary for the efficient implementation of this part.

(b) The department may adopt by reference regulations adopted under the FDA Food Safety Modernization Act, 21 U.S.C. 2201, et seq.

History: En. Sec. 3, Ch. 553, L. 1993; amd. Sec. 1, Ch. 44, L. 2017.

80-3-304. Disposition of funds — produce account. (1) There is a produce account in the state special revenue fund. All inspection and license fee revenue authorized and collected under this part must be deposited in the account to the credit of the department.

(2) Money received as revenue under this part that is not immediately required for the purposes of this part must be invested under provisions of the unified investment program established in Title 17, chapter 6, part 2. All interest earned on the account must be deposited in the account.

History: En. Sec. 4, Ch. 553, L. 1993.

80-3-305. Enforcement — stop sale order — injunction. (1) The department may place a stop sale order on any lot of produce sold or transported without proper labeling or in violation of this part.

(2) If a person violates any provision of this part, the department may seek to enjoin that person from further business until the person has complied with this part. The department may file an injunction action in the first judicial district court. The injunction provided for by this section is in addition to the misdemeanor penalty provided for in 80-3-306.

History: En. Sec. 5, Ch. 553, L. 1993.

80-3-306. Penalties. (1) A person who violates or aids in the violation of any provision of this part or rules adopted under this part is subject to one or both of the following penalties:

(a) an administrative civil penalty of not more than $1,000 for each offense;

(b) a misdemeanor punishable as provided in 46-18-212.

(2) Assessment of a civil penalty under subsection (1)(a) may be made in conjunction with any other warning, order, or administrative action authorized by 80-3-301 through 80-3-306 that is issued by the department. The proceeds of a civil penalty must be deposited in the general fund.

(3) The department shall establish by rule a penalty matrix that schedules the types of penalties, the amounts for initial and subsequent offenses, and other matters necessary for the administration of civil penalties under subsection (1)(a). The issuance of a civil penalty is subject to the contested case procedures of Title 2, chapter 4, part 6.

(4) Nothing in this part may be construed as requiring the department or its authorized representative to report violations of this part when a reasonable belief exists that the public interest will be served by a suitable warning.

(5) It is the duty of a county attorney to whom any violation is reported to cause appropriate proceedings to be initiated and prosecuted in a court of competent jurisdiction without delay.

History: En. Sec. 6, Ch. 553, L. 1993.

80-3-307 through 80-3-310 reserved.

80-3-311. Standard grades for produce. (1) Unless a Montana grade standard has been established, the standard grades for produce:

(a) are limited to the U.S. grades governing the produce;

(b) must conform in all respects and be identical with the most recent standards established by the U.S. department of agriculture for the produce; and

(c) when conforming, must be accepted as the legal standards for this state.

(2) The department may by rule establish state grades for produce grown in Montana when the amount grown reaches a volume rendering it of market importance or when requested by the industry. State produce grades must be established in consultation with representatives of the various components of the produce industry, including growers, sellers, buyers, traders, wholesalers, retailers, and consumers.

(3) The grade "Montana unclassified" must contain at least 50% of produce that would grade U.S. No. 2 or better.

(4) Produce not conforming to established grades may be sold if it is marked in the same manner as graded produce, except that in place of specifying the grade, the word "ungraded" or "unclassified" must be used.

History: En. Sec. 7, Ch. 553, L. 1993.

80-3-312. Markings — exceptions. (1) A person may not sell, pack, offer for sale or transport, deliver, or consign in interstate or intrastate commerce produce prepared for market unless each container has been legibly marked with the declared grade of the produce and the name and address of the person responsible for the packing and grading. The grade declared must conform to the provisions of this part.

(2) Produce that is grown in Montana or any other produce arriving or found in Montana in containers that have no grade marking must meet the requirements of the U.S. No. 1 grade or be marked with the proper grade.

(3) This section does not apply to:

(a) a person selling to the ultimate consumer produce that was grown by that person and that is not for resale; or

(b) the display of produce on a free choice rack.

(4) Produce may be sold for seed purposes when graded under rules adopted by the department and plainly marked for seed purposes.

History: En. Sec. 8, Ch. 553, L. 1993.

80-3-313. Advertisements — grade stated. Produce for which a grade is established in this part, when advertised with a price stated, must meet the requirements of U.S. No. 1 grade or better or must show, in addition to the price quoted, the true grade of the produce as provided by law. Price tags exhibited in a place of business on exposed produce are not considered advertising under this section.

History: En. Sec. 9, Ch. 553, L. 1993.

80-3-314. Reporting requirements — assessment fees — exceptions. (1) Produce sold or distributed in this state must be reported on forms approved by the department and must be assessed a fee for each produce unit or equivalent poundage. The fee amount may be adjusted by rule but must be at least 3 cents and not more than 7 cents for each produce unit.

(2) The produce dealer who first distributes produce in this state or a grower who retails Montana-grown produce with gross annual sales exceeding $25,000 shall pay the produce assessment fee established in subsection (1). However, any produce dealer in possession of the produce may be held responsible for payment of the fee unless the grower has paid for a produce dealer license or has made available to the produce dealer a written form provided by the department stating that the assessment fees are being paid.

(3) The report and fees are due 30 days after the last day of the reporting period. The reporting periods end June 30 and December 31.

(4) Payment of the produce assessment fee is not required on produce that is:

(a) grown and retailed in Montana by the grower if annual gross retail sales by the grower do not exceed $25,000;

(b) grown in this state, not packaged for market, and sold for resale by the grower;

(c) in the case of vegetative seed potato products, intended or used for planting purposes; or

(d) purchased from or distributed by a produce dealer licensed under 80-3-321 if the produce has been reported and the assessment fee has been paid.

(5) Fees must be paid only if they total more than $5 in a reporting period.

History: En. Sec. 10, Ch. 553, L. 1993; amd. Sec. 1, Ch. 191, L. 2009; amd. Sec. 1, Ch. 339, L. 2017.

80-3-315. Shipping point inspection — fees. Produce graded and prepared for shipment is subject to a shipping point inspection by the department upon request; however, Montana-grown seed potatoes that are entered in the Montana seed certification program and prepared for shipment off the farm for planting purposes are subject to a shipping point inspection by the department. Inspection fees must be set by rule and must be commensurate with the cost of providing the inspection.

History: En. Sec. 11, Ch. 553, L. 1993.

80-3-316 through 80-3-320 reserved.

80-3-321. Produce dealer license — exception — renewal. (1) A produce dealer license is required for any person who:

(a) wholesales produce in this state;

(b) transports produce from out of state into this state for retail sale; or

(c) retails produce grown by the produce dealer in this state when gross retail sales exceed $25,000 annually.

(2) A produce dealer license is not required for a person who complies with the requirements of this part and:

(a) retails produce grown by that person in this state if annual gross produce sales do not exceed $25,000. However, the person shall, upon request of the department, furnish a sworn statement providing that the produce was grown by that person, stating the location where the produce was grown, and stating the amount of gross sales.

(b) is a nonprofit organization that is recognized by the director and that retails only produce purchased from licensed produce dealers or from Montana produce dealers who are in compliance with this part.

(3) An applicant for a produce dealer license shall provide any information that the department finds necessary to carry out the provisions of this part. Produce dealer licenses expire on December 31 of the year of issuance. A produce dealer shall pay a nonrefundable license fee of $50. A separate license is required for each place of business, including vehicles. The license fee must be credited toward the produce assessment fee prescribed in 80-3-314.

(4) A produce dealer license, if required, must be carried at any time produce is sold, and the license is subject to inspection by any person.

(5) A license issued under this section may not be sold or transferred from one vehicle or location to another without the written consent of the department.

History: En. Sec. 12, Ch. 553, L. 1993; amd. Sec. 2, Ch. 191, L. 2009.

80-3-322. Revocation, suspension, and nonrenewal of license. The department may revoke, suspend, or refuse to renew a produce dealer license if the department has reasonable cause to believe that the licensee has committed any of the following acts:

(1) refusal or consistent failure to file a produce report or to pay the assessment fee required in 80-3-314;

(2) intentional or consistent failure to grade or mark produce as required in 80-3-312;

(3) aiding another person in the violation of any of the provisions of this part;

(4) failure or refusal to allow inspection of or to maintain and provide records, reports, or other information required by the department; or

(5) violation, failure, or refusal to comply with any other provision of this part or a rule adopted by the department in the implementation of this part.

History: En. Sec. 13, Ch. 553, L. 1993.

80-3-323. Publication of reports. The department may publish the names and addresses of persons licensed under this part and may also publish a list of licenses revoked, suspended, or not renewed pursuant to 80-3-322 and the reasons for revocation, suspension, or nonrenewal.

History: En. Sec. 14, Ch. 553, L. 1993.

Part 4 reserved

Part 5
Bean Storage
(Repealed)

80-3-501. Repealed. Sec. 75, Ch. 539, L. 1983.

History: En. Sec. 2, Ch. 164, L. 1935; re-en. Sec. 3592.55, R.C.M. 1935; amd. Sec. 32, Ch. 218, L. 1974; R.C.M. 1947, 3-702; amd. Sec. 3, Ch. 20, L. 1979.

80-3-502. Repealed. Sec. 75, Ch. 539, L. 1983.

History: En. Sec. 3, Ch. 164, L. 1935; re-en. Sec. 3592.56, R.C.M. 1935; R.C.M. 1947, 3-703.

80-3-503. Repealed. Sec. 75, Ch. 539, L. 1983.

History: En. Sec. 4, Ch. 164, L. 1935; re-en. Sec. 3592.57, R.C.M. 1935; amd. Sec. 32, Ch. 147, L. 1963; amd. Sec. 33, Ch. 218, L. 1974; R.C.M. 1947, 3-704; amd. Sec. 1, Ch. 300, L. 1979.

80-3-504. Repealed. Sec. 75, Ch. 539, L. 1983.

History: En. Sec. 5, Ch. 164, L. 1935; re-en. Sec. 3592.58, R.C.M. 1935; amd. Sec. 34, Ch. 218, L. 1974; R.C.M. 1947, 3-705.

80-3-505. Repealed. Sec. 75, Ch. 539, L. 1983.

History: En. Sec. 6, Ch. 164, L. 1935; re-en. Sec. 3592.59, R.C.M. 1935; amd. Sec. 35, Ch. 218, L. 1974; R.C.M. 1947, 3-706.

80-3-506. Repealed. Sec. 75, Ch. 539, L. 1983.

History: En. Sec. 7, Ch. 164, L. 1935; re-en. Sec. 3592.60, R.C.M. 1935; R.C.M. 1947, 3-707.

80-3-507. Repealed. Sec. 75, Ch. 539, L. 1983.

History: En. Sec. 8, Ch. 164, L. 1935; re-en. Sec. 3592.61, R.C.M. 1935; amd. Sec. 36, Ch. 218, L. 1974; R.C.M. 1947, 3-708.

80-3-508. Repealed. Sec. 75, Ch. 539, L. 1983.

History: En. Secs. 9, 13, Ch. 164, L. 1935; re-en. Secs. 3592.62, 3592.66, R.C.M. 1935; amd. Secs. 37, 40, Ch. 218, L. 1974; R.C.M. 1947, 3-709, 3-713; amd. Sec. 4, Ch. 20, L. 1979.

80-3-509. Repealed. Sec. 75, Ch. 539, L. 1983.

History: En. Sec. 10, Ch. 164, L. 1935; re-en. Sec. 3592.63, R.C.M. 1935; amd. Sec. 38, Ch. 218, L. 1974; amd. Sec. 8, Ch. 13, L. 1977; R.C.M. 1947, 3-710.

80-3-510. Repealed. Sec. 75, Ch. 539, L. 1983.

History: En. Sec. 11, Ch. 164, L. 1935; re-en. Sec. 3592.64, R.C.M. 1935; R.C.M. 1947, 3-711.

80-3-511. Repealed. Sec. 75, Ch. 539, L. 1983.

History: En. Sec. 12, Ch. 164, L. 1935; re-en. Sec. 3592.65, R.C.M. 1935; amd. Sec. 39, Ch. 218, L. 1974; amd. Sec. 9, Ch. 13, L. 1977; R.C.M. 1947, 3-712.

80-3-512. Repealed. Sec. 75, Ch. 539, L. 1983.

History: En. Sec. 14, Ch. 164, L. 1935; re-en. Sec. 3592.67, R.C.M. 1935; amd. Sec. 41, Ch. 218, L. 1974; R.C.M. 1947, 3-714.

80-3-513. Repealed. Sec. 75, Ch. 539, L. 1983.

History: En. Sec. 15, Ch. 164, L. 1935; re-en. Sec. 3592.68, R.C.M. 1935; R.C.M. 1947, 3-715; amd. Sec. 5, Ch. 20, L. 1979.

Part 6
Produce Wholesalers
(Repealed)

80-3-601. Repealed. Sec. 15, Ch. 553, L. 1993.

History: En. Sec. 3, Ch. 164, L. 1933; re-en. Sec. 2443.3, R.C.M. 1935; Sec. 84-3403, R.C.M. 1947; amd. and redes. 3-3301 by Sec. 160, Ch. 218, L. 1974; R.C.M. 1947, 3-3301; amd. Sec. 1, Ch. 406, L. 1981.

80-3-602. Repealed. Sec. 15, Ch. 553, L. 1993.

History: En. Sec. 2, Ch. 164, L. 1933; amd. Sec. 1, Ch. 173, L. 1935; re-en. Sec. 2443.2, R.C.M. 1935; Sec. 84-3402, R.C.M. 1947; amd. and redes. 3-3302 by Sec. 159, Ch. 218, L. 1974; R.C.M. 1947, 3-3302.

80-3-603. Repealed. Sec. 15, Ch. 553, L. 1993.

History: En. Sec. 4, Ch. 164, L. 1933; amd. Sec. 2, Ch. 173, L. 1935; re-en. Sec. 2443.4, R.C.M. 1935; Sec. 84-3404, R.C.M. 1947; amd. and redes. 3-3303 by Sec. 161, Ch. 218, L. 1974; amd. Sec. 24, Ch. 13, L. 1977; R.C.M. 1947, 3-3303(1) thru (4), (6); amd. Sec. 1, Ch. 257, L. 1987; amd. Sec. 1, Ch. 620, L. 1987.

80-3-604. Repealed. Sec. 15, Ch. 553, L. 1993.

History: En. Sec. 4, Ch. 164, L. 1933; amd. Sec. 2, Ch. 173, L. 1935; re-en. Sec. 2443.4, R.C.M. 1935; Sec. 84-3404, R.C.M. 1947; amd. and redes. 3-3303 by Sec. 161, Ch. 218, L. 1974; amd. Sec. 24, Ch. 13, L. 1977; R.C.M. 1947, 3-3303(5).

80-3-605. Repealed. Sec. 15, Ch. 553, L. 1993.

History: En. Sec. 5, Ch. 164, L. 1933; re-en. Sec. 2443.5, R.C.M. 1935; Sec. 84-3405, R.C.M. 1947; amd. and redes. 3-3304 by Sec. 162, Ch. 218, L. 1974; R.C.M. 1947, 3-3304.

80-3-606. Repealed. Sec. 15, Ch. 553, L. 1993.

History: En. Sec. 6, Ch. 164, L. 1933; re-en. Sec. 2443.6, R.C.M. 1935; Sec. 84-3406, R.C.M. 1947; amd. and redes. 3-3305 by Sec. 163, Ch. 218, L. 1974; R.C.M. 1947, 3-3305.

80-3-607. Repealed. Sec. 15, Ch. 553, L. 1993.

History: En. Sec. 7, Ch. 164, L. 1933; re-en. Sec. 2443.7, R.C.M. 1935; Sec. 84-3407, R.C.M. 1947; amd. and redes. 3-3306 by Sec. 164, Ch. 218, L. 1974; R.C.M. 1947, 3-3306.

80-3-608. Repealed. Sec. 15, Ch. 553, L. 1993.

History: En. Sec. 8, Ch. 164, L. 1933; re-en. Sec. 2443.8, R.C.M. 1935; Sec. 84-3408, R.C.M. 1947; amd. and redes. 3-3307 by Sec. 165, Ch. 218, L. 1974; R.C.M. 1947, 3-3307.

80-3-609. Repealed. Sec. 15, Ch. 553, L. 1993.

History: En. Sec. 10, Ch. 164, L. 1933; re-en. Sec. 2443.10, R.C.M. 1935; Sec. 84-3410, R.C.M. 1947; amd. and redes. 3-3308 by Sec. 166, Ch. 218, L. 1974; R.C.M. 1947, 3-3308.

80-3-610. Repealed. Sec. 15, Ch. 553, L. 1993.

History: En. Sec. 13, Ch. 164, L. 1933; re-en. Sec. 2443.13, R.C.M. 1935; Sec. 84-3413, R.C.M. 1947; amd. and redes. 3-3309 by Sec. 167, Ch. 218, L. 1974; R.C.M. 1947, 3-3309.

80-3-611. Repealed. Sec. 15, Ch. 553, L. 1993.

History: En. Sec. 14, Ch. 164, L. 1933; re-en. Sec. 2443.14, R.C.M. 1935; Sec. 84-3414, R.C.M. 1947; amd. and redes. 3-3310 by Sec. 168, Ch. 218, L. 1974; R.C.M. 1947, 3-3310.

80-3-612. Repealed. Sec. 15, Ch. 553, L. 1993.

History: En. Sec. 15, Ch. 164, L. 1933; re-en. Sec. 2443.15, R.C.M. 1935; Sec. 84-3415, R.C.M. 1947; amd. and redes. 3-3311 by Sec. 169, Ch. 218, L. 1974; amd. Sec. 5, Ch. 155, L. 1975; R.C.M. 1947, 3-3311.

80-3-613. Repealed. Sec. 15, Ch. 553, L. 1993.

History: En. Sec. 18, Ch. 164, L. 1933; amd. Sec. 3, Ch. 173, L. 1935; re-en. Sec. 2443.16, R.C.M. 1935; Sec. 84-3416, R.C.M. 1947; amd. and redes. 3-3312 by Sec. 170, Ch. 218, L. 1974; amd. Sec. 25, Ch. 13, L. 1977; R.C.M. 1974, 3-3312; amd. Sec. 50, Ch. 557, L. 1987.

Part 7
Itinerant Merchants
(Repealed)

80-3-701. Repealed. Sec. 15, Ch. 553, L. 1993.

History: (1)Ap. p. Sec. 1, Ch. 214, L. 1939; Sec. 84-3001, R.C.M. 1947; amd. and redes. 3-3201 by Sec. 144, Ch. 218, L. 1974; amd. Sec. 4, Ch. 155, L. 1975; Sec. 3-3201, R.C.M. 1947; Ap. p. Sec. 3, Ch. 214, L. 1939; Sec. 84-3003, R.C.M. 1947; amd. and redes. 3-3203 by Sec. 146, Ch. 218, L. 1974; Sec. 3-3203, R.C.M. 1947; (2)En. Sec. 2, Ch. 214, L. 1939; Sec. 84-3002, R.C.M. 1947; amd. and redes. 3-3202 by Sec. 145, Ch. 218, L. 1974; Sec. 3-3202, R.C.M. 1947; R.C.M. 1947, 3-3201, 3-3202, 3-3203; amd. Sec. 2, Ch. 620, L. 1987; amd. Sec. 1, Ch. 288, L. 1989.

80-3-702. Repealed. Sec. 15, Ch. 553, L. 1993.

History: En. Sec. 4, Ch. 214, L. 1939; Sec. 84-3004, R.C.M. 1947; amd. and redes. 3-3204 by Sec. 147, Ch. 218, L. 1974; R.C.M. 1947, 3-3204.

80-3-703. Repealed. Sec. 15, Ch. 553, L. 1993.

History: En. Sec. 5, Ch. 214, L. 1939; Sec. 84-3005, R.C.M. 1947; amd. and redes. 3-3205 by Sec. 148, Ch. 218, L. 1974; R.C.M. 1947, 3-3205.

80-3-704. Repealed. Sec. 15, Ch. 553, L. 1993.

History: En. Sec. 6, Ch. 214, L. 1939; Sec. 84-3006, R.C.M. 1947; amd. and redes. 3-3206 by Sec. 149, Ch. 218, L. 1974; R.C.M. 1947, 3-3206; amd. Sec. 3, Ch. 620, L. 1987; amd. Sec. 2, Ch. 288, L. 1989.

80-3-705. Repealed. Sec. 15, Ch. 553, L. 1993.

History: En. Sec. 7, Ch. 214, L. 1939; Sec. 84-3007, R.C.M. 1947; amd. and redes. 3-3207 by Sec. 150, Ch. 218, L. 1974; R.C.M. 1947, 3-3207; amd. Sec. 2, Ch. 257, L. 1987; amd. Sec. 3, Ch. 288, L. 1989.

80-3-706. Repealed. Sec. 15, Ch. 553, L. 1993.

History: En. Sec. 8, Ch. 214, L. 1939; Sec. 84-3008, R.C.M. 1947; amd. and redes. 3-3208 by Sec. 151, Ch. 218, L. 1974; R.C.M. 1947, 3-3208; amd. Sec. 4, Ch. 288, L. 1989.

80-3-707. Repealed. Sec. 15, Ch. 553, L. 1993.

History: En. Sec. 9, Ch. 214, L. 1939; Sec. 84-3009, R.C.M. 1947; amd. and redes. 3-3209 by Sec. 152, Ch. 218, L. 1974; R.C.M. 1947, 3-3209.

80-3-708. Repealed. Sec. 15, Ch. 553, L. 1993.

History: En. Sec. 10, Ch. 214, L. 1939; Sec. 84-3010, R.C.M. 1947; amd. and redes. 3-3210 by Sec. 153, Ch. 218, L. 1974; R.C.M. 1947, 3-3210.

80-3-709. Repealed. Sec. 15, Ch. 553, L. 1993.

History: En. Sec. 11, Ch. 214, L. 1939; Sec. 84-3011, R.C.M. 1947; amd. and redes. 3-3211 by Sec. 154, Ch. 218, L. 1974; R.C.M. 1947, 3-3211.

80-3-710. Repealed. Sec. 15, Ch. 553, L. 1993.

History: En. Sec. 12, Ch. 214, L. 1939; Sec. 84-3012, R.C.M. 1947; amd. and redes. 3-3212 by Sec. 155, Ch. 218, L. 1974; R.C.M. 1947, 3-3212.

80-3-711. Repealed. Sec. 15, Ch. 553, L. 1993.

History: En. Sec. 13, Ch. 214, L. 1939; Sec. 84-3013, R.C.M. 1947; amd. and redes. 3-3213 by Sec. 156, Ch. 218, L. 1974; R.C.M. 1947, 3-3213.

80-3-712. Repealed. Sec. 15, Ch. 553, L. 1993.

History: En. Sec. 14, Ch. 214, L. 1939; Sec. 84-3014, R.C.M. 1947; amd. and redes. 3-3214 by Sec. 157, Ch. 218, L. 1974; R.C.M. 1947, 3-3214.

80-3-713. Repealed. Sec. 15, Ch. 553, L. 1993.

History: En. Sec. 15, Ch. 214, L. 1939; Sec. 84-3015, R.C.M. 1947; amd. and redes. 3-3215 by Sec. 158, Ch. 218, L. 1974; R.C.M. 1947, 3-3215.

CHAPTER 4
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Public markets, Title 7, ch. 21, part 33.

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Part 1
Grain Standards
(Repealed)

80-4-101. Repealed. Sec. 75, Ch. 539, L. 1983.
History: En. Sec. 20, Ch. 216, L. 1921; re-en. Sec. 3574, R.C.M. 1921; amd. Sec. 1, Ch. 41, L. 1923; amd. Sec. 1, Ch. 154, L. 1929; amd. Sec. 1, Ch. 35, L. 1933; re-en. Sec. 3574, R.C.M. 1935; amd. Sec. 1, Ch. 224, L. 1961; amd. Sec. 1, Ch. 13, L. 1977; R.C.M. 1947, 3-201(1) thru (3).

80-4-102. Repealed. Sec. 75, Ch. 539, L. 1983.
History: (1)En. Sec. 22, Ch. 216, L. 1921; re-en. Sec. 3576, R.C.M. 1921; amd. Sec. 2, Ch. 154, L. 1929; re-en. Sec. 3576, R.C.M. 1935; amd. Sec. 1, Ch. 7, L. 1957; amd. Sec. 10, Ch. 177, L. 1965; amd. Sec. 9, Ch. 218, L. 1974; amd. Sec. 2, Ch. 13, L. 1977; Sec. 3-205, R.C.M. 1947; (2)En. Sec. 26, Ch. 216, L. 1921; re-en. Sec. 3580, R.C.M. 1921; re-en. Sec. 3580, R.C.M. 1935; amd. Sec. 14, Ch. 218, L. 1974; Sec. 3-211, R.C.M. 1947; R.C.M. 1947, 3-205(part), 3-211.

80-4-103. Repealed. Sec. 75, Ch. 539, L. 1983.
History: En. Sec. 22, Ch. 216, L. 1921; re-en. Sec. 3576, R.C.M. 1921; amd. Sec. 2, Ch. 154, L. 1929; re-en. Sec. 3576, R.C.M. 1935; amd. Sec. 1, Ch. 7, L. 1957; amd. Sec. 10, Ch. 177, L. 1965; amd. Sec. 9, Ch. 218, L. 1974; amd. Sec. 2, Ch. 13, L. 1977; R.C.M. 1947, 3-205(part).

80-4-104. Repealed. Sec. 75, Ch. 539, L. 1983.
History: En. Sec. 36, Ch. 216, L. 1921; re-en. Sec. 3592, R.C.M. 1921; re-en. Sec. 3592, R.C.M. 1935; amd. Sec. 27, Ch. 218, L. 1974; R.C.M. 1947, 3-232(4).

80-4-105. Repealed. Sec. 75, Ch. 539, L. 1983.
History: En. Sec. 24, Ch. 216, L. 1921; re-en. Sec. 3578, R.C.M. 1921; re-en. Sec. 3578, R.C.M. 1935; amd. Sec. 10, Ch. 218, L. 1974; R.C.M. 1947, 3-207.

80-4-106. Repealed. Sec. 75, Ch. 539, L. 1983.
History: (1)En. Sec. 23, Ch. 216, L. 1921; re-en. Sec. 3577, R.C.M. 1921; re-en. Sec. 3577, R.C.M. 1935; Sec. 3-206, R.C.M. 1947; (2)En. Sec. 29, Ch. 216, L. 1921; re-en. Sec. 3583, R.C.M. 1921; re-en. Sec. 3583, R.C.M. 1935; amd. Sec. 17, Ch. 218, L. 1974; Sec. 3-215, R.C.M. 1947; R.C.M. 1947, 3-206, 3-215; amd. Sec. 6, Ch. 20, L. 1979.

80-4-107 through 80-4-110 reserved.

80-4-111. Repealed. Sec. 75, Ch. 539, L. 1983.
History: En. Sec. 26, Ch. 216, L. 1921; re-en. Sec. 3580, R.C.M. 1921; re-en. Sec. 3580, R.C.M. 1935; amd. Sec. 12, Ch. 218, L. 1974; amd. Sec. 1, Ch. 43, L. 1977; R.C.M. 1947, 3-209.

80-4-112. Repealed. Sec. 75, Ch. 539, L. 1983.
History: En. Sec. 26, Ch. 216, L. 1921; re-en. Sec. 3580, R.C.M. 1921; re-en. Sec. 3580, R.C.M. 1935; amd. Sec. 13, Ch. 218, L. 1974; amd. Sec. 3, Ch. 13, L. 1977; R.C.M. 1947, 3-210.

80-4-113. Repealed. Sec. 75, Ch. 539, L. 1983.
History: En. Sec. 34, Ch. 216, L. 1921; re-en. Sec. 3590, R.C.M. 1921; re-en. Sec. 3590, R.C.M. 1935; amd. Sec. 25, Ch. 218, L. 1974; R.C.M. 1947, 3-230.

80-4-114. Repealed. Sec. 75, Ch. 539, L. 1983.
History: En. Sec. 35, Ch. 216, L. 1921; re-en. Sec. 3591, R.C.M. 1921; re-en. Sec. 3591, R.C.M. 1935; amd. Sec. 26, Ch. 218, L. 1974; R.C.M. 1947, 3-231.

80-4-115. Repealed. Sec. 75, Ch. 539, L. 1983.
History: En. Sec. 36, Ch. 216, L. 1921; re-en. Sec. 3592, R.C.M. 1921; re-en. Sec. 3592, R.C.M. 1935; amd. Sec. 27, Ch. 218, L. 1974; R.C.M. 1947, 3-232(1) thru (3).

80-4-116. Repealed. Sec. 75, Ch. 539, L. 1983.
History: En. 3-232.1 by Sec. 28, Ch. 218, L. 1974; R.C.M. 1947, 3-232.1.

80-4-117. Repealed. Sec. 75, Ch. 539, L. 1983.

History: En. Sec. 1, Ch. 160, L. 1935; re-en. Sec. 3592.42, R.C.M. 1935; amd. Sec. 1, Ch. 379, L. 1973; Sec. 3-512, R.C.M. 1947; amd. and redes. 3-232.2 by Sec. 30, Ch. 218, L. 1974; R.C.M. 1947, 3-232.2.

80-4-118. Repealed. Sec. 75, Ch. 539, L. 1983.

History: En. Sec. 2, Ch. 160, L. 1935; re-en. Sec. 3592.43, R.C.M. 1935; Sec. 3-513, R.C.M. 1947; amd. and redes. 3-232.3 by Sec. 31, Ch. 218, L. 1974; R.C.M. 1947, 3-232.3.

80-4-119. Repealed. Sec. 75, Ch. 539, L. 1983.

History: (1), (2)En. Sec. 27, Ch. 216, L. 1921; re-en. Sec. 3581, R.C.M. 1921; amd. Sec. 4, Ch. 154, L. 1929; re-en. Sec. 3581, R.C.M. 1935; amd. Sec. 16, Ch. 218, L. 1974; Sec. 3-213, R.C.M. 1947; (3) thru (5)En. Sec. 1, Ch. 203, L. 1957; amd. Sec. 27, Ch. 147, L. 1963; amd. Sec. 1, Ch. 70, L. 1973; amd. Sec. 29, Ch. 218, L. 1974; amd. Sec. 4, Ch. 16, L. 1977; Sec. 3-233, R.C.M. 1947; R.C.M. 1947, 3-213, 3-233.

80-4-120. Repealed. Sec. 75, Ch. 539, L. 1983.

History: En. Sec. 28, Ch. 216, L. 1921; re-en. Sec. 3582, R.C.M. 1921; re-en. Sec. 3582, R.C.M. 1935; amd. Sec. 2, Ch. 7, L. 1957; R.C.M. 1947, 3-214.

80-4-121. Repealed. Sec. 75, Ch. 539, L. 1983.

History: En. Sec. 30, Ch. 216, L. 1921; re-en. Sec. 3584, R.C.M. 1921; re-en. Sec. 3584, R.C.M. 1935; amd. Sec. 18, Ch. 218, L. 1974; R.C.M. 1947, 3-216.

80-4-122. Repealed. Sec. 75, Ch. 539, L. 1983.

History: En. Sec. 1, Ch. 9, L. 1957; Sec. 94-35-270, R.C.M. 1947; redes. 3-234 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 3-234.

80-4-123. Repealed. Sec. 75, Ch. 539, L. 1983.

History: En. Sec. 2, Ch. 9, L. 1957; Sec. 94-35-271, R.C.M. 1947; redes. 3-235 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 3-235.

80-4-124. Repealed. Sec. 75, Ch. 539, L. 1983.

History: En. Sec. 1, Ch. 80, L. 1959; Sec. 94-35-271.1, R.C.M. 1947; redes. 3-236 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 3-236.

80-4-125. Repealed. Sec. 75, Ch. 539, L. 1983.

History: En. Sec. 2, Ch. 80, L. 1959; Sec. 94-35-271.2, R.C.M. 1947; redes. 3-237 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 3-237.

80-4-126. Repealed. Sec. 75, Ch. 539, L. 1983.

History: En. Sec. 3, Ch. 80, L. 1959; Sec. 94-35-271.3, R.C.M. 1947; redes. 3-238 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 3-238.

Part 2
Grain Merchandising and Storage (Repealed)

80-4-201. Repealed. Sec. 75, Ch. 539, L. 1983.

History: (1), (4), (8)En. Sec. 20, Ch. 216, L. 1921; re-en. Sec. 3574, R.C.M. 1921; amd. Sec. 1, Ch. 41, L. 1923; amd. Sec. 1, Ch. 154, L. 1929; amd. Sec. 1, Ch. 35, L. 1933; re-en. Sec. 3574, R.C.M. 1935; amd. Sec. 1, Ch. 224, L. 1961; amd. Sec. 1, Ch. 13, L. 1977; Sec. 3-201, R.C.M. 1947; (2), (3), (5) thru (7)En. Sec. 1, Ch. 39, L. 1973; amd. Sec. 3, Ch. 43, L. 1977; Sec. 3-228.1, R.C.M. 1947; R.C.M. 1947, 3-201(4) thru (6), 3-228.1(part).

80-4-202. Repealed. Sec. 75, Ch. 539, L. 1983.

History: En. Sec. 2, Ch. 39, L. 1973; amd. Sec. 4, Ch. 43, L. 1977; R.C.M. 1947, 3-228.2.

80-4-203. Repealed. Sec. 75, Ch. 539, L. 1983.

History: En. Sec. 3, Ch. 39, L. 1973; amd. Sec. 41, Ch. 359, L. 1977; R.C.M. 1947, 3-228.3.

80-4-204. Repealed. Sec. 75, Ch. 539, L. 1983.

History: En. Sec. 4, Ch. 39, L. 1973; R.C.M. 1947, 3-228.4.

80-4-205. Repealed. Sec. 75, Ch. 539, L. 1983.

History: En. Sec. 5, Ch. 39, L. 1973; R.C.M. 1947, 3-228.5.

80-4-206. Repealed. Sec. 75, Ch. 539, L. 1983.

History: En. Sec. 6, Ch. 39, L. 1973; R.C.M. 1947, 3-228.6.

80-4-207. Repealed. Sec. 75, Ch. 539, L. 1983.

History: En. Sec. 7, Ch. 39, L. 1973; R.C.M. 1947, 3-228.7.

80-4-208. Repealed. Sec. 75, Ch. 539, L. 1983.
History: En. 3-228.8 by Sec. 1, Ch. 86, L. 1974; R.C.M. 1947, 3-228.8.

80-4-209. Repealed. Sec. 75, Ch. 539, L. 1983.
History: En. Sec. 33, Ch. 216, L. 1921; re-en. Sec. 3589, R.C.M. 1921; amd. Sec. 5, Ch. 41, L. 1923; re-en. Sec. 3589, R.C.M. 1935; amd. Sec. 2, Ch. 224, L. 1961; amd. Sec. 23, Ch. 218, L. 1974; amd. Sec. 7, Ch. 13, L. 1977; amd. Sec. 2, Ch. 43, L. 1977; R.C.M. 1947, 3-227.

80-4-210 through 80-4-220 reserved.

80-4-221. Repealed. Sec. 75, Ch. 539, L. 1983.
History: En. Sec. 26, Ch. 216, L. 1921; re-en. Sec. 3580, R.C.M. 1921; re-en. Sec. 3580, R.C.M. 1935; amd. Sec. 15, Ch. 218, L. 1974; R.C.M. 1947, 3-212.

80-4-222. Repealed. Sec. 75, Ch. 539, L. 1983.
History: En. Sec. 25, Ch. 216, L. 1921; re-en. Sec. 3579, R.C.M. 1921; amd. Sec. 3, Ch. 154, L. 1929; amd. Sec. 2, Ch. 35, L. 1933; re-en. Sec. 3579, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1957; amd. Sec. 1, Ch. 196, L. 1974; amd. Sec. 11, Ch. 218, L. 1974; amd. Sec. 1, Ch. 302, L. 1975; amd. Sec. 1, Ch. 177, L. 1977; R.C.M. 1947, 3-208.

80-4-223. Repealed. Sec. 75, Ch. 539, L. 1983.
History: En. Sec. 25, Ch. 209, L. 1919; re-en. Sec. 3585, R.C.M. 1921; re-en. Sec. 3585, R.C.M. 1935; amd. Sec. 19, Ch. 218, L. 1974; R.C.M. 1947, 3-217.

80-4-224. Repealed. Sec. 75, Ch. 539, L. 1983.
History: En. Sec. 26, Ch. 209, L. 1919; re-en. Sec. 31, Ch. 216, L. 1921; re-en. Sec. 3586, R.C.M. 1921; re-en. Sec. 3586, R.C.M. 1935; amd. Sec. 20, Ch. 218, L. 1974; R.C.M. 1947, 3-218.

80-4-225. Repealed. Sec. 75, Ch. 539, L. 1983.
History: En. Sec. 28, Ch. 209, L. 1919; re-en. Sec. 3587, R.C.M. 1921; re-en. Sec. 3587, R.C.M. 1935; R.C.M. 1947, 3-219.

80-4-226. Repealed. Sec. 75, Ch. 539, L. 1983.
History: En. Sec. 32, Ch. 216, L. 1921; re-en. Sec. 3588, R.C.M 1921; amd. Sec. 3, Ch. 41, L. 1923; amd. Sec. 1, Ch. 174, L. 1925; amd. Sec. 5, Ch. 154, L. 1929; amd. Sec. 3, Ch. 35, L. 1933; re-en. Sec. 3588, R.C.M. 1935; amd. Sec. 4, Ch. 13, L. 1977; R.C.M. 1947, 3-220.

80-4-227. Repealed. Sec. 75, Ch. 539, L. 1983.
History: En. Sec. 32, Ch. 216, L. 1921; re-en. Sec. 3588, R.C.M. 1921; amd. Sec. 3, Ch. 41, L. 1923; amd. Sec. 1, Ch. 174, L. 1925; amd. Sec. 5, Ch. 154, L. 1929; amd. Sec. 3, Ch. 35, L. 1933; re-en. Sec. 3588, R.C.M. 1935; amd. Sec. 21, Ch. 218, L. 1974; R.C.M. 1947, 3-221.

80-4-228. Repealed. Sec. 75, Ch. 539, L. 1983.
History: En. Sec. 32, Ch. 216, L. 1921; re-en. Sec. 3588, R.C.M. 1921; amd. Sec. 3, Ch. 41, L. 1923; amd. Sec. 1, Ch. 174, L. 1925; amd. Sec. 5, Ch. 154, L. 1929; amd. Sec. 3, Ch. 35, L. 1933; re-en. Sec. 3588, R.C.M. 1935; amd. Sec. 22, Ch. 218, L. 1974; R.C.M. 1947, 3-222.

80-4-229. Repealed. Sec. 75, Ch. 539, L. 1983.
History: En. Sec. 32, Ch. 216, L. 1921; re-en. Sec. 3588, R.C.M. 1921; amd. Sec. 3, Ch. 41, L. 1923; amd. Sec. 1, Ch. 174, L. 1925; amd. Sec. 5, Ch. 154, L. 1929; amd. Sec. 3, Ch. 35, L. 1933; re-en. Sec. 3588, R.C.M. 1935; R.C.M. 1947, 3-223.

80-4-230. Repealed. Sec. 75, Ch. 539, L. 1983.
History: En. Sec. 32, Ch. 216, L. 1921; re-en. Sec. 3588, R.C.M. 1921; amd. Sec. 3, Ch. 41, L. 1923; amd. Sec. 1, Ch. 174, L. 1925; amd. Sec. 5, Ch. 154, L. 1929; amd. Sec. 3, Ch. 35, L. 1933; re-en. Sec. 3588, R.C.M. 1935; amd. Sec. 5, Ch. 13, L. 1977; R.C.M. 1947, 3-224.

80-4-231. Repealed. Sec. 75, Ch. 539, L. 1983.
History: En. Sec. 3588-A, R.C.M. 1921, by Sec. 4, Ch. 41, L. 1923; re-en. Sec. 3588.1, R.C.M. 1935; amd. Sec. 6, Ch. 13, L. 1977; R.C.M. 1947, 3-225(part).

80-4-232. Repealed. Sec. 75, Ch. 539, L. 1983.
History: En. Sec. 3588-A, R.C.M. 1921, by Sec. 4, Ch. 41, L. 1923; re-en. Sec. 3588.1, R.C.M. 1935; amd. Sec. 6, Ch. 13, L. 1977; R.C.M. 1947, 3-225(part).

80-4-233. Repealed. Sec. 75, Ch. 539, L. 1983.
History: En. Sec. 3588-B, R.C.M. 1921, by Sec. 4, Ch. 41, L. 1923; re-en. Sec. 3588.2, R.C.M. 1935; amd. Sec. 11-101, Ch. 264, L. 1963; R.C.M. 1947, 3-226.

80-4-234. Repealed. Sec. 75, Ch. 539, L. 1983.
History: En. Sec. 3589-A, R.C.M. 1921, by Sec. 6, Ch. 41, L. 1923; amd. Sec. 1, Ch. 42, L. 1925; re-en. Sec. 3589.1, R.C.M. 1935; amd. Sec. 24, Ch. 218, L. 1974; R.C.M. 1947, 3-229.

Part 3
Commercial Mustard — Standards and Merchandising (Repealed)

80-4-301. Repealed. Sec. 22, Ch. 76, L. 1997.
History: En. Sec. 1, Ch. 35, L. 1941; amd. Sec. 1, Ch. 170, L. 1957; amd. Sec. 20, Ch. 13, L. 1977; R.C.M. 1947, 3-1901.

80-4-302. Repealed. Sec. 22, Ch. 76, L. 1997.
History: En. Sec. 2, Ch. 35, L. 1941; amd. Sec. 1, Ch. 31, L. 1971; amd. Sec. 21, Ch. 13, L. 1977; amd. Sec. 6, Ch. 315, L. 1977; R.C.M. 1947, 3-1902(1) thru (4), (6) thru (9).

80-4-303. Repealed. Sec. 22, Ch. 76, L. 1997.
History: En. Sec. 2, Ch. 35, L. 1941; amd. Sec. 1, Ch. 31, L. 1971; amd. Sec. 21, Ch. 13, L. 1977; amd. Sec. 6, Ch. 315, L. 1977; R.C.M. 1947, 3-1902(5), (10).

80-4-304. Repealed. Sec. 22, Ch. 76, L. 1997.
History: En. Sec. 3, Ch. 35, L. 1941; amd. Sec. 2, Ch. 170, L. 1957; amd. Sec. 22, Ch. 13, L. 1977; R.C.M. 1947, 3-1903.

80-4-305. Repealed. Sec. 22, Ch. 76, L. 1997.
History: En. Sec. 4, Ch. 35, L. 1941; R.C.M. 1947, 3-1904.

80-4-306. Repealed. Sec. 22, Ch. 76, L. 1997.
History: En. Sec. 5, Ch. 35, L. 1941; R.C.M. 1947, 3-1905.

80-4-307. Repealed. Sec. 22, Ch. 76, L. 1997.
History: En. Sec. 6, Ch. 35, L. 1941; amd. Sec. 37, Ch. 147, L. 1963; amd. Sec. 100, Ch. 218, L. 1974; R.C.M. 1947, 3-1906; amd. Sec. 1, Ch. 277, L. 1983.

80-4-308. Repealed. Sec. 22, Ch. 76, L. 1997.
History: En. Sec. 7, Ch. 35, L. 1941; amd. Sec. 7, Ch. 315, L. 1977; R.C.M. 1947, 3-1907.

80-4-309 and 80-4-310 reserved.

80-4-311. Repealed. Sec. 75, Ch. 539, L. 1983.
History: En. Sec. 1, Ch. 64, L. 1939; amd. Sec. 101, Ch. 218, L. 1974; amd. Sec. 8, Ch. 315, L. 1977; R.C.M. 1947, 3-1908.

80-4-312. Repealed. Sec. 75, Ch. 539, L. 1983.
History: En. Sec. 2, Ch. 64, L. 1939; amd. Sec. 102, Ch. 218, L. 1974; R.C.M. 1947, 3-1909.

80-4-313. Repealed. Sec. 75, Ch. 539, L. 1983.
History: En. Sec. 5, Ch. 64, L. 1939; R.C.M. 1947, 3-1912.

Part 4
Agricultural Commodities Generally

80-4-401. Short title. Parts 4 through 7 of this chapter may be cited as the "Agricultural Warehouse, Commodity Dealer, and Grain Standards Act".
History: En. Sec. 1, Ch. 539, L. 1983.

80-4-402. Definitions. As used in parts 4 through 7 of this chapter, the following definitions apply:

(1) "Agent" means a person who contracts for or solicits any agricultural commodities from a producer or warehouse operator or negotiates the consignment or purchase of any agricultural commodity on behalf of a commodity dealer.

(2) "Agricultural commodity" means any grain, oil seed crops, seed, or other crops designated by rule of the department.

(3) "Bailment" means the transfer, by written or verbal contract, of an agricultural commodity by an owner of a commodity to a producer for the purpose of obtaining the producer's services in planting, growing, harvesting, or delivering back to the owner the agricultural commodity. The term includes any one or all of the enumerated transactions, whether title passes or not.

(4) "Bond" means the bond required to be filed by part 5 or 6 of this chapter and includes any equivalent established by department rule, as provided in 80-4-504 and 80-4-604.

(5) (a) "Commodity dealer" means a person who engages in a business involving or, as part of the business, participates in buying, brokering, exchanging, negotiating, or soliciting the sale, resale, exchange, bailment, or transfer of any agricultural commodity in the state of Montana, including online transactions of agricultural commodities grown in Montana.

(b) The term does not include:

(i) a person engaged solely in storing, shipping, or handling agricultural commodities for hire;

(ii) a person who buys agricultural commodities from a licensed commodity dealer;

(iii) a person who does not purchase more than $30,000 worth of agricultural commodities from producers during a licensing year; however, once a person exceeds the $30,000 exemption, the person shall obtain a license and is not eligible for the exemption for the succeeding year;

(iv) a person who is the producer of agricultural commodities that the person actually plants, nurtures, and harvests;

(v) a person whose trading in agricultural commodities is limited to trading in commodity futures on a recognized futures exchange; or

(vi) a person who buys agricultural commodities used exclusively for the feeding of livestock.

(6) "Delayed payment contract" means a written contract for the sale of an agricultural commodity when the purchase price is to be paid at a date after delivery of the agricultural commodity to the buyer and includes but is not limited to those contracts commonly referred to as deferred payment contracts, deferred pricing contracts, no-price-established contracts, or price-later contracts. A delayed payment contract does not include those contracts in which the parties intend payment to be made immediately upon determination of weights and grades.

(7) "Department" means the department of agriculture provided for in 2-15-3001.

(8) "Depositor" means a person who delivers an agricultural commodity to a commodity dealer for sale, who deposits an agricultural commodity in a warehouse for storage, processing, handling, or shipment, who is the owner or legal holder of an outstanding warehouse receipt, or who is lawfully entitled to possession of the agricultural commodity.

(9) "Director" means the director of the department of agriculture.

(10) "Equity" means the residual interest in the assets of a person that remains after deducting the liabilities of the person under generally accepted accounting principles.

(11) "FGIS" means the federal grain inspection service, a program administered by the federal grain inspection, packers, and stockyards administration (GIPSA).

(12) "Grain" means all grains for which standards have been established under the Grain Standards Act and all other agricultural commodities, such as mustard, oil seed crops, or other crops, that may be designated by rule of the department.

(13) "Grain standards" means the official standards of quality and condition of grain that establish the grades defined by the Grain Standards Act or those standards adopted by department rule.

(14) "Grain Standards Act" means the United States Grain Standards Act, 7 U.S.C. 71 through 87.

(15) "Inspector" means a person designated by the director to assist in the administration of parts 4 through 7 of this chapter. The term includes warehouse auditors or examiners.

(16) "Official agricultural commodity inspectors" means official personnel who perform or supervise the performance of official inspection services and certify the results of inspections, including the grade of agricultural commodities.

(17) "Official agricultural commodity samplers" or "samplers" means official personnel who perform or supervise the performance of official sampling services and certify the results of the sampling.

(18) "Official agricultural commodity weighers" means official personnel who perform or supervise the performance of class X or class Y weighing services and certify the results of the services, including the weight of the agricultural commodity.

(19) "Person" means an individual, firm, association, corporation, partnership, or any other form of business enterprise.

(20) "Producer" means the owner, tenant, or operator of land in this state who has an interest in and receives all or part of the proceeds from the sale of agricultural commodities produced on that land.

(21) "Public warehouse" or "warehouse" means an elevator, mill, warehouse, subterminal grain warehouse, public warehouse, or other structure or facility in which, for compensation, agricultural commodities are received for storage, handling, processing, or shipment. The term includes facilities that commingle commodities belonging to different lots of agricultural commodities.

(22) "Purchase contract" means a delayed payment contract or other written contract for the purchase of agricultural commodities by a commodity dealer.

(23) "Purchase price" means the final price after premiums and discounts are assessed.

(24) "Receipt" means a warehouse receipt.

(25) "Scale weight ticket" means a load slip or other evidence of delivery, other than a receipt, given to a depositor by a warehouse operator licensed under the provisions of part 5 of this chapter upon initial delivery of the agricultural commodity to the warehouse.

(26) "Station" means a warehouse located more than 3 miles from the central office of the warehouse.

(27) "Subterminal warehouse" means a warehouse where an intermediate function is performed in which agricultural commodities are customarily received from dealers or producers and where the commodities are accumulated prior to shipment.

(28) "Terminal grain warehouse" means a warehouse authorized by a grain exchange to receive or disburse grain on consignment as presented by the rules and regulations of a grain exchange.

(29) "Warehouse operator" means a person operating or controlling a public warehouse.

(30) "Warehouse receipt" means every receipt, whether negotiable or nonnegotiable, issued under part 5 of this chapter by a warehouse operator, except scale weight tickets.

(31) "Working capital" means the excess of current assets over current liabilities under generally accepted accounting principles.

History: En. Sec. 2, Ch. 539, L. 1983; amd. Sec. 1, Ch. 55, L. 1985; amd. Sec. 1, Ch. 578, L. 1985; amd. Sec. 1, Ch. 299, L. 1991; amd. Sec. 1, Ch. 452, L. 1993; amd. Sec. 1, Ch. 337, L. 1995; amd. Sec. 2, Ch. 76, L. 1997; amd. Sec. 1, Ch. 168, L. 2001; amd. Sec. 1, Ch. 175, L. 2011; amd. Sec. 1, Ch. 302, L. 2019.

80-4-403. Rules — adoption. The department shall adopt such rules as it determines necessary for the efficient execution of the provisions of parts 4 through 7 of this chapter.

History: En. Sec. 3, Ch. 539, L. 1983.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

80-4-404. Terms of licenses — renewals. Each license issued or renewed under parts 5 and 6 of this chapter shall be issued for a period to be prescribed by rule of the department.

History: En. Sec. 4, Ch. 539, L. 1983.

80-4-405. Maximum bond amount. The maximum amount of any public warehouse operator bond may not exceed $1 million and the maximum amount of a commodity dealer bond may not exceed $1 million, except:

(1) any bonds compensating for equity or working capital deficiencies prescribed in parts 5 and 6 of this chapter must be added to the maximum bond amount. If the public warehouse operator is also licensed as a commodity dealer, only one bond amount is required.

(2) if required as part of a commodity warehouse operator's or commodity dealer's license modified by the department pursuant to 80-4-421.

History: En. Sec. 5, Ch. 539, L. 1983; amd. Sec. 20, Ch. 452, L. 1993; amd. Sec. 3, Ch. 76, L. 1997; amd. Sec. 2, Ch. 175, L. 2011; amd. Sec. 2, Ch. 302, L. 2019.

80-4-406. Appointment by nonresident licensee of agent to receive process. A nonresident applying for a license under this chapter shall file a written power of attorney, designating the secretary of state as the nonresident's agent upon whom service of process may be had if legal action is brought against the nonresident. A nonresident who has an appointed resident agent upon whom legal process may be served as provided by law is not required to designate the secretary of state as the nonresident's agent for service of process. The department

must be furnished a copy of the designation of the resident agent, and the copy must be certified by the secretary of state.

History: En. Sec. 6, Ch. 539, L. 1983; amd. Sec. 2575, Ch. 56, L. 2009.

80-4-407. Reports to the department. Each person licensed under parts 5 and 6 of this chapter shall report to the department at intervals set by rule of the department on forms prepared by it. The reports must show the total weight of each kind of agricultural commodity received and shipped, the amount of outstanding warehouse receipts on that date, and a statement of the amount of agricultural commodities on hand to cover the outstanding warehouse receipts. The department may also, by rule, require special reports at any time.

History: En. Sec. 7, Ch. 539, L. 1983.

80-4-408. Examination of books. The department is authorized, through its officials, employees, or designated agents, to examine or copy all books, records, papers, and accounts of persons licensed under parts 5 and 6 of this chapter.

History: En. Sec. 8, Ch. 539, L. 1983.

80-4-409. Confidentiality of records. All financial statements of warehouse operators and commodity dealers required under the provisions of parts 5 and 6 of this chapter must be kept confidential by the department and are not subject to disclosure except:

(1) upon written permission of the licensee;

(2) in actions or administrative proceedings commenced under the provisions of parts 4 through 7 of this chapter;

(3) when required by subpoena or court order;

(4) when disclosed to law enforcement agencies in connection with the investigation or prosecution of criminal offenses; or

(5) when released to a bonding company approved by the department.

History: En. Sec. 9, Ch. 539, L. 1983; amd. Sec. 20, Ch. 452, L. 1993; amd. Sec. 4, Ch. 76, L. 1997.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Right of privacy, Art. II, sec. 10, Mont. Const.
Public records, Title 2, ch. 6.

80-4-410. Publication of reports. The department may publish the results of any investigation made. It may publish the names and addresses of persons licensed under parts 5 and 6 of this chapter, and it may also publish a list of all licenses terminated under parts 5 and 6 of this chapter and the causes therefor.

History: En. Sec. 10, Ch. 539, L. 1983.

80-4-411. Employment of assistants. The department is authorized to employ qualified persons not regularly in the service of the state for temporary assistance in carrying out the provisions of parts 4 through 7 of this chapter.

History: En. Sec. 11, Ch. 539, L. 1983.

80-4-412 through 80-4-414 reserved.

80-4-415. Creation of commodity dealer/public warehouse operators account — deposit of funds. (1) There is an account in the state special revenue fund. All revenue received under this chapter must be deposited in the account.

(2) Money received as revenue under this chapter that is not immediately required for the purposes of this chapter must be invested under the provisions of the unified investment program established in Title 17, chapter 6, part 2. All earned interest must be deposited in the account.

History: En. Sec. 16, Ch. 452, L. 1993.

80-4-416. Deposit of deficiency funds and liquidation funds. Revenue based on actual expenses received from the liquidation of commodity dealers and public warehouse operators, as authorized in 80-4-538 and 80-4-612, and from deficiency fees, authorized in 80-4-503, must be deposited in the account established in 80-4-415 and is statutorily appropriated, as provided in 17-7-502, to the department for the purposes of this chapter. Funds deposited under this chapter must be used to pay actual expenses incurred in the liquidation of commodity dealers and public

warehouse operators or for the correction of storage deficiencies. Actual expenses include but are not limited to legal fees, court costs, travel expenses, per diem, and communication.

History: En. Sec. 17, Ch. 452, L. 1993.

80-4-417 and 80-4-418 reserved.

80-4-419. Bankruptcy as grounds for cancellation. (1) If a commodity dealer files for bankruptcy, a contract or any part of a contract for delivery of a commodity may be canceled without penalty to the producer if the cancellation involves only the remaining unperformed portions of the contract. A cancellation under this section:

(a) is not a breach of contract;

(b) is allowed even if not explicitly provided for in the contract.

(2) In the event of a cancellation, a commodity dealer remains responsible for payment that is due to the producer for delivered portions of the contract.

History: En. Sec. 1, Ch. 247, L. 2013.

80-4-420. Producer's lien. (1) Agricultural commodities contained on the premises of a public warehouse operator or commodity dealer, including agricultural commodities owned by the warehouse operator or commodity dealer, are subject to a first priority lien in favor of holders of outstanding warehouse receipts, purchase contracts, scale weight tickets, bailment contracts, or any other evidence of storage or sale.

(2) The lien must be preferred to a lien or security interest in favor of a creditor of the warehouse operator or commodity dealer regardless of the time when the creditor's lien or security interest attached to the agricultural commodities. Notice of the lien need not be filed in order to perfect the lien.

(3) The lien is discharged as to agricultural commodities sold by the warehouse operator or commodity dealer to a buyer in the ordinary course of business. The sale does not discharge the lien in favor of an individual holder of outstanding warehouse receipts, purchase contracts, scale weight tickets, bailment contracts, or other evidence of storage or sale on the remaining agricultural commodities on the premises.

History: En. Sec. 18, Ch. 452, L. 1993; amd. Sec. 1, Ch. 177, L. 2003.

Cross-References

Liens, Title 71, ch. 3.

80-4-421. License suspension and revocation — renewal. (1) The department may revoke, suspend, or modify a commodity warehouse operator's or commodity dealer's license when it has reasonable cause to believe that the licensee has committed any of the following acts, each of which is a violation of parts 4 through 7 of this chapter:

(a) failure to maintain all initial licensing requirements, including insurance, bonding, equity, and working capital requirements. In determining compliance with equity and working capital requirements, the department may consider the licensee's status under any prior or current bankruptcy proceedings, as well as any outstanding civil settlements or judgments.

(b) aiding or abetting another person in the violation of the licensure or any other provisions of parts 4 through 7 of this chapter;

(c) conviction of any criminal offense defined under Title 45, after considering Title 37, chapter 1, part 2;

(d) failure or refusal to allow inspection or maintain and provide records, reports, and other information required by the department;

(e) failure or refusal to post storage and other charges as filed with the department;

(f) failure or refusal to accept agricultural commodities for storage as required under 80-4-523;

(g) failure to comply with the warehouse receipt and scale weight ticket requirements of 80-4-525 and 80-4-527;

(h) failure of a warehouse operator to maintain and deliver upon request sufficient agricultural commodities to cover outstanding warehouse receipts as required under 80-4-531;

(i) discrimination in charges by a warehouse operator as provided in 80-4-524;

(j) failure to provide payment for any agricultural commodity;

(k) failure to satisfy a judgment entered as a result of a violation of this chapter;

(l) violation of or failure or refusal to comply with any other provision of parts 4 through 7 of this chapter or any rule adopted by the department pursuant to parts 4 through 7; or

(m) failure to assess, report, or pay an assessment authorized and required pursuant to Title 80, chapter 4 or 11.

(2) The department may refuse to issue or renew a license if the applicant or licensee:

(a) has a license as a warehouse operator or commodity dealer that was previously or is currently suspended or revoked. In determining the sufficiency of cause, the department shall consider the nature and length of the action and any subsequent licensure or other evidence of rehabilitation.

(b) does not satisfy the bonding, insurance, equity, or working capital requirements as specified in subsection (1)(a) or any other provisions required as a condition to licensing;

(c) has been convicted of a criminal offense and the denial or refusal is made after considering Title 37, chapter 1, part 2.

(3) The issuance of a license based on information provided by the applicant that the department subsequently determines incorrect is void, and any conduct under that license is a violation.

(4) All proceedings brought under subsections (1) and (2) must be conducted under the provisions of the Montana Administrative Procedure Act.

(5) The department is authorized to issue summary revocations, suspensions, or denials without hearing pursuant to the procedures established in 2-4-631.

History: En. Sec. 12, Ch. 539, L. 1983; amd. Sec. 20, Ch. 452, L. 1993; amd. Sec. 5, Ch. 76, L. 1997; amd. Sec. 1, Ch. 131, L. 2005; amd. Sec. 3, Ch. 175, L. 2011.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

80-4-422. Delayed payment or purchase contracts. (1) A commodity dealer who purchases agricultural commodities by purchase contract shall maintain books, records, and other documents as required by the department to establish compliance with the provisions of this section.

(2) In addition to other required information, a purchase contract must contain or provide for all of the following:

(a) the seller's and purchaser's name and address;

(b) the conditions of delivery;

(c) the amount and kind of agricultural commodities delivered;

(d) the price per unit or basis of value;

(e) the date payment is to be made; and

(f) a notice of financial risk involved in the delayed payment contract, in a form the department shall adopt pursuant to the rulemaking authority provided in 80-4-403.

(3) Title to all agricultural commodities sold by purchase contract is in the purchaser as of the time the agricultural commodities are delivered to and in physical control of the purchaser unless the contract provides otherwise. The contract must be signed by both parties and executed in duplicate. One copy must be retained by the commodity dealer, and one copy must be provided to the seller. Upon revocation, suspension, or termination of a commodity dealer's or warehouse operator's license, the department may advance the payment date for all delayed payment contracts to a date not later than 30 days following the effective date of the revocation, suspension, or termination. When not otherwise provided, the purchase price for all agricultural commodities must be determined as of the effective date of revocation, suspension, or termination in accordance with all other provisions of the contract. However, if the business of the commodity dealer is sold to another licensed commodity dealer, purchase contracts may be assigned to the purchasing commodity dealer.

(4) Any contract that does not satisfy the conditions imposed by this part is considered a sale other than a purchase contract and is subject to the provisions of 80-4-608.

History: En. Sec. 13, Ch. 539, L. 1983; amd. Sec. 1, Ch. 518, L. 1991; amd. Sec. 2, Ch. 452, L. 1993.

80-4-423. Repealed. Sec. 22, Ch. 76, L. 1997.

History: En. Sec. 14, Ch. 539, L. 1983.

80-4-424. Director's authority — investigative hearing. The director may upon the director's own motion, whenever the director has reason to believe a violation has occurred or upon verified complaint of any person in writing, investigate the actions of any person and, if the director finds probable cause, shall notify the person that the person shall appear for an investigative hearing before the director 20 days from receipt of written notice.

History: En. Sec. 15, Ch. 539, L. 1983; amd. Sec. 2576, Ch. 56, L. 2009.

80-4-425. Action on bond by persons injured — liability of surety — statute of limitations. (1) All claims against a bond must be made by and through the department. A person injured by the breach of an obligation for which a bond is given to the department may file a complaint with the department. The department shall then investigate the complaint and determine whether it is valid and whether there are any other outstanding obligations due. If the department finds that there are one or more valid obligations, the department shall make demand upon the warehouse operator or commodity dealer and the commodity dealer's surety for payment. If the payment is not made promptly, the department shall commence an action on the bond to enforce payment. If the department determines that a complaint is without merit, the department shall notify the complainant of that determination in writing. The complainant may then bring a contested case under Title 2, chapter 4, part 6, to the department for a determination of whether the department should pursue the claim against the bond.

(2) If two or more persons are injured by breach of the obligation for which the bond is given and the damages for violating the conditions of the bond exceed the specified amount of the bond, the recovery on the bond must be prorated by the surety among all of those injured.

(3) The liability of a surety under a bond extends to all obligations from commodity dealers' or public warehouse operators' transactions entered into during the year in which the bond was in effect, up to the maximum amount of the bond. Claims must be brought against the bond within 2 succeeding license years.

History: En. Sec. 16, Ch. 539, L. 1983; amd. Sec. 3, Ch. 452, L. 1993.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

80-4-426. Duty to prosecute. (1) A county attorney who has appropriate jurisdiction and to whom any violation is reported shall cause appropriate proceedings to be instituted and prosecute without delay in a court of competent jurisdiction.

(2) In addition to or exclusive of the remedy in subsection (1), the department may seek a civil penalty for any violation of this part.

History: En. Sec. 17, Ch. 539, L. 1983; amd. Sec. 1, Ch. 79, L. 2019.

80-4-427. Injunction. If a person without a license is found to have engaged in any business for which a license is required under parts 5 and 6 of this chapter, the court shall enjoin that person from further business until the person has been licensed. It is not necessary that the department show that an individual has been injured by the actions complained of in order to issue the injunction. The procedure for injunctive relief is the same as any other action for an injunction under Title 27. The department may, in its discretion, file the action in the first judicial district court. The injunction provided by this section is an additional remedy to the criminal or civil penalties provided for in 80-4-428.

History: En. Sec. 18, Ch. 539, L. 1983; amd. Sec. 141, Ch. 370, L. 1987; amd. Sec. 4, Ch. 452, L. 1993; amd. Sec. 2, Ch. 79, L. 2019.

80-4-428. Penalty for operating without license — misrepresentation. (1) A person acting as a warehouse operator or a commodity dealer without a license or in any way representing by action or words that the person is a warehouse operator or a commodity dealer when not licensed violates the provisions of Title 80, chapter 4, parts 5 and 6, is guilty of a felony, and is punishable by imprisonment for not more than 10 years or by a fine of not more than $10,000, or both.

(2) A person who issues or aids in the issuance of a fraudulent receipt for any commodity is guilty of a felony and is punishable by imprisonment for not more than 10 years or by a fine of not more than $10,000, or both.

(3) A person who knowingly submits false information to or who knowingly withholds information from the department when that information is required to be submitted is guilty of a felony.

(4) (a) A person who violates any provision of this section is subject to an administrative civil penalty of not more than $100,000 for each transaction in violation.

(b) The department shall establish by rule a penalty matrix that schedules the types of penalties, the amounts for initial and subsequent offenses, and other matters necessary for the administration of civil penalties under this subsection (4). The issuance of a civil penalty is subject to the contested case procedures of Title 2, chapter 4, part 6. The department shall adopt the rules within 3 months of July 1, 2019. The department may not enforce penalties provided for in this section until the rules are adopted.

(c) Funds received in the form of civil penalties must be deposited in the general fund.

History: En. Sec. 19, Ch. 539, L. 1983; amd. Sec. 20, Ch. 452, L. 1993; amd. Sec. 2577, Ch. 56, L. 2009; amd. Sec. 3, Ch. 79, L. 2019.

80-4-429. Penalty. (1) Except as otherwise provided, a person who violates any provision of parts 4 through 7 of this chapter or rules promulgated under parts 4 through 7 or who impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the director or an authorized representative in the performance of a duty under parts 4 through 7 of this chapter is guilty of a misdemeanor.

(2) A person who refuses to permit inspection of licensed premises, books, accounts, records, or other documents required by parts 4 through 7 of this chapter or who uses a scale weight ticket or purchase contract that fails to satisfy the requirements of parts 4 through 7 of this chapter is guilty of a misdemeanor.

(3) A person acting as a commodity dealer or warehouse operator who knowingly sells warehouse-receipted agricultural commodities that the person is not authorized to sell or who fails to pay for purchased agricultural commodities is guilty of a felony.

(4) A person exempted from licensure as a commodity dealer under the provisions of 80-4-402(5)(b)(vi) who fails to pay in full all amounts due to a producer for the sale of agricultural commodities is guilty of a felony and is also subject to any additional administrative penalty authorized by this chapter.

(5) A person is guilty of a felony if that person knowingly delivers to a commodity dealer or warehouse operator or upon the exercise of reasonable diligence should have known of the delivery to that person of an agricultural commodity that contains:

(a) a nitrogen fertilizer added to harvested grain;

(b) a poisonous, deleterious, or other substance not registered or approved by federal or state statutes, regulations, or rules; or

(c) a registered or approved substance that has not been used or applied according to label directions or other government standards.

(6) (a) A person who violates any provision of this section is subject to an administrative civil penalty of not more than $100,000 for each transaction in violation.

(b) The department shall establish by rule a penalty matrix that schedules the types of penalties, the amounts for initial and subsequent offenses, and other matters necessary for the administration of civil penalties under this subsection (6). The issuance of a civil penalty is subject to the contested case procedures of Title 2, chapter 4, part 6. The department shall adopt the rules within 3 months of July 1, 2019. The department may not enforce penalties provided for in this section until the rules are adopted.

(c) Funds received in the form of civil penalties must be deposited in the general fund.

History: En. Sec. 20, Ch. 539, L. 1983; amd. Sec. 2, Ch. 299, L. 1991; amd. Sec. 5, Ch. 452, L. 1993; amd. Sec. 2, Ch. 337, L. 1995; amd. Sec. 6, Ch. 76, L. 1997; amd. Sec. 2, Ch. 168, L. 2001; amd. Sec. 4, Ch. 79, L. 2019.

80-4-430. Director's enforcement action. Title 80, chapter 4, parts 4 through 7, may not be construed to require the director or the director's authorized representative to report for prosecution or for the institution of civil action a violation if the director or the representative believes that the public interest will best be served by a suitable warning.

History: En. Sec. 21, Ch. 539, L. 1983; amd. Sec. 2578, Ch. 56, L. 2009.

Part 5
Agricultural Commodity Warehouse Operators

Part Cross-References

U.C.C. — warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

80-4-501. License necessary to operate public warehouse. (1) A person may not act as a warehouse operator without first having obtained an annual license from the department. This requirement and other requirements in parts 4 through 6 that regulate the activities of a warehouse operator do not apply to operators of warehouses that are federally licensed under the United States Warehouse Act. However, if a federally licensed warehouse operator engages in business as a commodity dealer, the provisions of parts 4 through 7 apply to the commodity dealer activity.

(2) If a warehouse operator operates two or more warehouses in the same city or immediately adjacent to the city or in the same immediate area, in conjunction with each other and with the same workforce, if one set of books and records is kept for all the warehouses, cash slips, scale weight tickets, and warehouse receipts, and if checks of one series are used for agricultural commodities stored in the warehouse, only one warehouse operator's license is required for the operation of all the warehouses.

History: En. Sec. 22, Ch. 539, L. 1983; amd. Sec. 20, Ch. 452, L. 1993; amd. Sec. 7, Ch. 76, L. 1997.

80-4-502. Licenses to warehouse operator — issuance — renewal — conditions precedent. (1) The department is authorized to issue or renew, upon application, a license to any warehouse operator for the conduct of a warehouse or warehouses in accordance with parts 5 and 6 of this chapter, provided the following conditions are met:

(a) Each applicant shall file and maintain satisfactory evidence of an effective policy of insurance issued by an insurance company authorized to do business in this state, insuring all agricultural commodities that are stored in the warehouse, including agricultural commodities owned by the warehouse operator. The insurance must insure the commodities for the full market value at the time of loss of the commodities against loss by fire, internal explosion, lightning, or tornado.

(b) Each warehouse must be found suitable for the proper storage of the particular agricultural commodity stored in the warehouse.

(c) A license fee must be submitted to the department as prescribed by 80-4-503.

(d) A current drawing of the warehouse, showing storage facilities and capacity of the warehouse, must be submitted to the department.

(e) A sufficient and valid bond must be filed and maintained as required by 80-4-504 and 80-4-505.

(f) (i) Except as provided in subsection (1)(f)(ii), the applicant has submitted to the department a current financial statement prepared by a certified public accountant according to generally accepted accounting principles, showing that the applicant has and maintains positive working capital.

(ii) An applicant without positive working capital may provide the department with additional bonding, or an equivalent in the form of a certificate of deposit or irrevocable letter of credit, in the amount of $2,000 for each $1,000 of deficit. The bond or equivalent required in this subsection (1)(f)(ii) is in addition to the bond amount required in 80-4-505.

(g) The applicant must submit a sample warehouse receipt and subsequent revisions to the department for approval and filing.

(h) The applicant must have complied with the terms of this part and the rules prescribed thereunder.

(2) All documents required for renewal of a license must be received by the department prior to the expiration date of the warehouse license. An expired warehouse license may be reinstated by the department upon receipt of all required licensing documents and a penalty fee of $50 if the documents are filed within 30 days from the date of expiration of the warehouse license. All license applications received after the 30-day penalty period must be considered original applications and an initial license fee must be assessed according to 80-4-503.

History: En. Sec. 23, Ch. 539, L. 1983; amd. Sec. 1, Ch. 157, L. 1989; amd. Sec. 20, Ch. 452, L. 1993; amd. Sec. 4, Ch. 175, L. 2011; amd. Sec. 22, Ch. 169, L. 2015.

80-4-503. Fees of department. (1) The department shall collect an annual warehouse operator license fee of $232 for each warehouse owned or operated by the warehouse operator.

(2) If, after evaluation of the commodity dealer/public warehouse operator program, the department determines that revenue from license fees is inadequate to accomplish the purposes of this chapter, the department may by rule increase the license fees, but the fee may not exceed $500 for a facility.

(3) The department shall collect a fee of $150 a day or fraction of a day for maintaining an employee of the department at a warehouse to supervise the correction of a deficiency.

(4) All license fees collected under subsection (1) and deficiency fees collected under subsection (3) must be deposited into the commodity dealer/public warehouse operators account.

History: En. Sec. 24, Ch. 539, L. 1983; amd. Sec. 4, Ch. 620, L. 1987; amd. Sec. 6, Ch. 452, L. 1993.

80-4-504. Bond of applicant for license — additional bond — additional obligations. (1) Each applicant for a warehouse operator's license shall file a bond or its equivalent, as established by department rule, with the department. The bond must be in the form and must contain the terms and conditions that the department may prescribe by rule to carry out the purpose of 80-4-505 and this section.

(2) The department may demand an additional bond if the nature or volume of the business conducted by the warehouse operator warrants an increase.

(3) The warehouse operator may give a single bond to cover all warehouses operated by the operator.

(4) Any changes in the capacity of a warehouse or installation of any new warehouse involving a change in the bond liability under 80-4-505 must be reported in writing to the director, and an appropriate bond must be filed prior to the operation of the warehouse or installation.

History: En. Sec. 25, Ch. 539, L. 1983; amd. Sec. 2, Ch. 578, L. 1985; amd. Sec. 20, Ch. 452, L. 1993; amd. Sec. 2579, Ch. 56, L. 2009.

80-4-505. Amount of bond — cancellation. (1) The amount of the bond to be furnished for each warehouse must be fixed at a rate of 20 cents per hundredweight for the first 500,000 hundredweight of licensed capacity; 15 cents per hundredweight for the next 500,000 hundredweight of licensed capacity; and 10 cents per hundredweight for all licensed capacity over 1 million hundredweight. The amount of the bond may not be less than $20,000 or more than the maximum prescribed in 80-4-405. The licensed capacity is the maximum number of hundredweight of agricultural commodities that the warehouse can accommodate.

(2) If a warehouse operator is also operating as a commodity dealer, the warehouse operator shall also provide a bond as prescribed in 80-4-604.

(3) If a deficiency occurs in the equity required under 80-4-506, there must be added to the amount of bond determined in accordance with subsection (1) an amount equal to that deficiency.

(4) Each warehouse operator bond runs continuously with the license until canceled by the bonding company.

(5) A 60-day written notice must be given to the department by the bonding company before any bond is canceled; however, the cancellation does not terminate any liability of the surety incurred prior to the date of cancellation.

History: En. Sec. 26, Ch. 539, L. 1983; amd. Sec. 3, Ch. 578, L. 1985; amd. Sec. 7, Ch. 452, L. 1993; amd. Sec. 5, Ch. 175, L. 2011.

80-4-506. Equity requirements. (1) Each licensee or applicant for a license shall maintain, above all exemptions and liabilities, total equity liable for the payment of any indebtedness arising from the conduct of the warehouse or warehouses of at least 40 cents per hundredweight of all agricultural commodities that the licensee's or applicant's warehouse or warehouses can accommodate.

(2) A person may not be licensed as a warehouse operator unless the person has and maintains allowable positive equity.

(3) Assets must be valued at original cost less depreciation, except that upon written request filed with the department, the director may allow asset valuations in accordance with a competent appraisal.

(4) In determining total equity, credit may be given for insurable property, such as buildings, machinery, equipment, and merchandise inventory, only to the extent that the property is protected by insurance against loss or damage by fire. The insurance must be in the form of lawful policies issued by one or more insurance companies authorized to do business and subject to service of process in suits brought in this state.

(5) If a warehouse operator is licensed or applies for licenses to operate two or more warehouses, the maximum number of hundredweight that all warehouses will accommodate must be considered in determining whether the warehouse operator meets the equity requirements specified in this section.

History: En. Sec. 27, Ch. 539, L. 1983; amd. Sec. 4, Ch. 578, L. 1985; amd. Sec. 20, Ch. 452, L. 1993; amd. Sec. 2580, Ch. 56, L. 2009; amd. Sec. 6, Ch. 175, L. 2011.

80-4-507 through 80-4-520 reserved.

80-4-521. Duties of warehouse operator — content of records. (1) Each warehouse operator shall maintain in a safe place current and complete records at all times with respect to all agricultural commodities stored, conditioned, handled, or shipped by the operator, including agricultural commodities owned by the operator. The records must include but are not limited to a daily position record, showing the total quantity of each kind and class of agricultural commodity received and loaded out and the amount remaining in storage at the close of each business day and the warehouse operator's total storage obligations for each kind and class of agricultural commodity at the close of each business day.

(2) Each warehouse operator purchasing any agricultural commodity from a depositor shall promptly make and keep for 5 years a correct record showing in detail the following information:

(a) the name and address of the depositor;

(b) the date purchased;

(c) the terms of the sale; and

(d) the quality and quantity purchased by the warehouse operator and, when applicable, the dockage, tare, grade, size, and net weight.

History: En. Sec. 28, Ch. 539, L. 1983; amd. Sec. 20, Ch. 452, L. 1993; amd. Sec. 2581, Ch. 56, L. 2009.

80-4-522. Schedule of charges — posting. (1) Before a license to conduct a warehouse is granted, the warehouse operator shall file with the director a copy of the schedule of charges for storage and other services. The schedule must be posted in a conspicuous place in the warehouse.

(2) All charges made by a warehouse operator for the handling and storage of agricultural commodities must be just and reasonable. However, the director may, upon the complaint of any person or upon the director's own motion, hold a public hearing and may declare any existing charges for handling or storage of any agricultural commodity to be unreasonable or unjust. After the hearing, the director shall determine and order what is a just and reasonable charge to be imposed or enforced in place of that found to be unreasonable or unjust.

(3) Failure to file and post scheduled charges for the current year will keep in full force the most recently posted and filed schedule rates.

(4) In all cases, the producers must receive the first 15 days of storage without charge.

History: En. Sec. 29, Ch. 539, L. 1983; amd. Sec. 20, Ch. 452, L. 1993; amd. Sec. 2582, Ch. 56, L. 2009.

80-4-523. Required receipt of agricultural commodities according to capacity. A warehouse operator must receive for storage, conditioning, handling, or shipment without discrimination of any kind, so far as the capacity of the operator's warehouse will permit, all agricultural commodities tendered to the operator in the usual course of business in suitable condition for storage. However, a warehouse operator may not be compelled to accept and hold agricultural commodities for storage in quantities that block the operator's regular cash agricultural commodity business. A warehouse operator may not be required to accept agricultural commodities for storage in excess of working capacity. However, the operator's appointment of space may be modified by rule upon proof that the appointment operates to the disadvantage of either the public or the warehouse operator.

History: En. Sec. 30, Ch. 539, L. 1983; amd. Sec. 20, Ch. 452, L. 1993; amd. Sec. 2583, Ch. 56, L. 2009.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

80-4-524. Discrimination in charge by warehouse operator prohibited. A warehouse operator may not directly or indirectly, by a special charge, rebate, drawback, or other device, collect from any person a greater or lesser compensation for any service rendered in the storage, conditioning, handling, or shipment of agricultural commodities than the operator collects from any other person for a similar circumstance or condition. A warehouse operator may not make or give any advantage to any person, company, or corporation or subject any person, company, or corporation to any undue or unreasonable prejudice or disadvantage.

History: En. Sec. 31, Ch. 539, L. 1983; amd. Sec. 20, Ch. 452, L. 1993; amd. Sec. 2584, Ch. 56, L. 2009.

80-4-525. Scale weight tickets — form — issuance. (1) Scale weight tickets must be bound in books of convenient size and must be numbered consecutively. The original scale weight ticket must be delivered to the person from whom the agricultural commodities are received. One carbon copy of each scale weight ticket must remain as a permanent record.

(2) A scale weight ticket must be issued for each load of agricultural commodity received by the warehouse operator.

(3) A scale weight ticket may not be issued or held in lieu of a warehouse receipt. However, an agricultural commodity under scale weight ticket is considered warehoused liability, and title remains with the depositor until:

(a) the agricultural commodity is sold under a purchase contract;

(b) the agricultural commodity is paid for under 80-4-608; or

(c) a warehouse receipt is issued.

(4) There must be plainly printed across the face of the scale weight ticket issued by the warehouse operator, in bold type, the words "THIS IS NOT A WAREHOUSE RECEIPT. IT MUST BE EXCHANGED FOR A WAREHOUSE RECEIPT IF GRAIN IS HELD IN STORAGE".

(5) All scale weight tickets must be signed by the warehouse operator or the warehouse operator's agent.

(6) All scale weight tickets must be converted into cash or warehouse receipts on demand.

History: En. Sec. 32, Ch. 539, L. 1983; amd. Sec. 3, Ch. 299, L. 1991; amd. Sec. 8, Ch. 452, L. 1993.

80-4-526. Warehouse receipts — written terms. (1) Warehouse receipts under this part must contain in written terms:

(a) a statement that the warehouse is operated under a license issued by the department;

(b) a statement showing whether it is an original, duplicate, triplicate, or other copy;

(c) a statement showing the name of the warehouse;

(d) a statement showing the name of the city or town where the warehouse is located;

(e) the date the warehouse receipt is issued;

(f) the number of the warehouse receipt. All receipts must be numbered consecutively.

(g) a statement that the grain is "received in store" from the person named;

(h) a statement of gross weight, dockage, and net weight and the sample report used for grade and protein analysis;

(i) a statement of encumbrances, such as cash or other advances;

(j) a statement that, upon the return of the receipt properly endorsed by the person to whom the order was issued and the payment of the proper charges for storing and handling, delivery will be made in accordance with this part;

(k) a statement that the grain is properly insured for the benefit of the owner; and

(l) the name of the manager or agent of the warehouse.

(2) The face of the warehouse receipt may also provide for other statements, such as:

(a) the scale weight ticket numbers or the assembly sheet number;

(b) the grade; and

(c) the protein certificate used.

(3) The back of the warehouse receipt may include printed statements, such as:

(a) delivery provisions;

(b) actual-delivery-of-grain provisions;

(c) bailment provisions provided for in Title 30, chapter 7, part 2, that do not conflict with this part;

(d) act-of-God provisions;

(e) nonnegotiable provisions; and

(f) endorsements and other statements pertinent to bookkeeping data whenever the statements do not conflict with any state or federal law pertaining to public warehousing or the grading or testing of grain.

(4) A copy of the warehouse receipt issued by the warehouse operator must accompany each application for a warehouse operator's license.

History: En. Sec. 33, Ch. 539, L. 1983; amd. Sec. 20, Ch. 452, L. 1993; amd. Sec. 3, Ch. 168, L. 2001.

Cross-References

Warehouse receipts — special provisions, Title 30, ch. 7, part 2.

80-4-527. Warehouse receipt — issuance — cancellation. (1) A warehouse receipt is a receipt issued by a licensed warehouse operator on a form containing all the information required by 80-4-526.

(2) A warehouse receipt may not be issued except for an agricultural commodity actually delivered to a warehouse for storage.

(3) All warehouse operators are required to issue a warehouse receipt for each lot of agricultural commodity received for storage or make payment for the agricultural commodity.

(4) A warehouse receipt that does not in fact represent an agricultural commodity actually delivered into a warehouse for storage and the origin of which cannot be traced to the actual delivery of the grain represented:

(a) is not legal and is of no value;

(b) has no claim on the agricultural commodity stored in a warehouse; and

(c) has no claim on the warehouse operator's bond.

(5) All agricultural commodities in a warehouse belong to the holder of outstanding warehouse receipts except those commodities that are in excess of the total of all outstanding storage obligations. An outstanding warehouse receipt is a warehouse receipt that has not been returned and paid in full on the basis of grade, quality, and quantity by the warehouse operator issuing it.

(6) If for convenience the holder of two or more warehouse receipts covering like agricultural commodities wishes to combine them, the new receipt must state the fact that it was issued in lieu of existing receipts. An assembly or recapitulation statement must be made whenever receipts are so combined, and the number or other identification of the statement must be referenced on the new combined receipt. The assembly sheet must be kept on file in the warehouse office. Each canceled receipt must have stamped across its face "Canceled by No. __" (showing the number of the new combination receipt).

(7) A warehouse operator who is a grower may receive the warehouse operator's own grain and issue warehouse receipts for agricultural commodities, in the same manner and without discrimination, as though the warehouse and growing enterprises were of separate ownership. However, the warehouse operator shall report to the department all warehouse receipts issued to the warehouse operator as a grower.

(8) When warehouse receipts are prepared on duplicate or triplicate forms, the original copy is the warehouse receipt and must be given upon request to the person storing the agricultural commodity covered by the receipt. The other copies must have plainly printed across the face the words "duplicate", "triplicate", or "nonnegotiable".

(9) Each warehouse receipt issued must show the amount of cash or value of any merchandise the warehouse operator has advanced on the agricultural commodity represented by the receipt, but the notation may not be construed as fixing the date of sale of the grain.

(10) All warehouse receipts must be numbered consecutively as issued by each warehouse operator.

(11) Warehouse receipts must be issued when storage is charged but no later than 30 days after delivery unless agreed to in writing by both parties.

(12) Warehouse receipts must be canceled by drawing a diagonal line and writing "CANCELED" across the face of the original copy of the warehouse receipt. The cancellation date and method of settlement, such as check number or purchase contract number, must also be noted on the face of the original copy of the warehouse receipt. The warehouse receipt holder or the receipt holder's agent shall sign and date the reverse side of the original copy of the warehouse receipt at the time of settlement. If the agricultural commodity is redelivered to the receipt holder, that fact must be noted.

History: En. Sec. 34, Ch. 539, L. 1983; amd. Sec. 4, Ch. 299, L. 1991; amd. Sec. 9, Ch. 452, L. 1993.

80-4-528. Penalty for unlawful issue of warehouse receipts. A person violating any of the provisions of 80-4-527 or a designated employee knowingly permitting any agricultural commodity to be delivered contrary to the provisions of 80-4-527 is guilty of a misdemeanor and punishable as provided in 80-4-429.

History: En. Sec. 35, Ch. 539, L. 1983.

80-4-529. Partial withdrawal of agricultural commodities — adjustment or substitution of receipt — duties of warehouse operator. When partial withdrawal of a depositor's agricultural commodity is made by a depositor, the warehouse operator shall make an appropriate notation on the depositor's warehouse receipt or claim or shall cancel and replace it with a warehouse receipt showing the amount of the depositor's agricultural commodity remaining in the warehouse. The warehouse operator is liable for the redelivery of all agricultural commodities specified on all outstanding warehouse receipts.

History: En. Sec. 36, Ch. 539, L. 1983; amd. Sec. 20, Ch. 452, L. 1993; amd. Sec. 2585, Ch. 56, L. 2009.

80-4-530. Shipment of stored grain to terminal grain warehouse outside state. (1) Warehouse receipts or signed agreements from the owners of grain, on a form approved by the department and in an amount equal to the number of bushels the warehouse operator has in a terminal grain warehouse outside the state, are required for all grain shipped out of state by a warehouse operator.

(2) Warehouse receipts covering grain in terminal grain warehouses outside the state must have the words "Owner waives redelivery at point of origin of grain represented by this receipt" printed or stamped on the back.

(3) Waivers or agreements to accept terminal warehouse receipts must be signed in triplicate by the owner of the grain or the owner's agent and by an authorized representative of the warehouse, with:

(a) the original to be mailed to the department;

(b) the duplicate copy to be retained by the warehouse operator; and

(c) the triplicate copy to be given to the holder of the warehouse receipt.

(4) All grain must be held in bonded and approved terminal warehouses, fully insured for the benefit of the holder of Montana warehouse receipts.

(5) Grain held in terminal warehouses is not subject to any lien, mortgage, or encumbrance.

History: En. Sec. 37, Ch. 539, L. 1983; amd. Sec. 20, Ch. 452, L. 1993; amd. Sec. 2586, Ch. 56, L. 2009.

80-4-531. Duty to deliver stored agricultural commodities — weights and inspections — modifying agreements — damages. (1) The duty of the warehouse operator to deliver agricultural commodities stored is governed by this part. Upon the return of a properly endorsed warehouse receipt to the warehouse operator and upon payment or tender of all advances and legal charges, agricultural commodities of the grade and quantity named therein must be delivered to the holder of the warehouse receipt.

(2) The holder of the warehouse receipt is entitled to an official inspection, as specified by the federal grain inspection service in the regulations implementing the United States Grain Standards Act. Inspections other than official must be agreed to in writing by the warehouse operator and the holder of the warehouse receipt.

(3) (a) The holder of a warehouse receipt is entitled to class X or Y weights or better, as specified by the federal grain inspection service in the regulations implementing the United States Grain Standards Act.

(b) In the event an approved class X or Y weight is unavailable at the warehouse of origin, the following weights take precedence in this order:

(i) destination official or certified class X or Y or better; or

(ii) railroad track scale weights.

(4) The parties to a storage agreement are bound by an agreement made under this section and intended to supplement or modify the optional sections of the warehouse receipt if the agreement offer is made in writing and the receiving party fails to reject the offer in writing within 10 days of receipt of the written offer. In order to be valid, the agreement offer must state in boldface type that the receiving party has 10 days to reject the offer.

(5) A warehouse operator's duty to deliver any agricultural commodity is fulfilled if delivery is made pursuant to the contract with the depositor as rapidly as it can be done by ordinary

diligence. When delivery is made within 48 hours from date of demand or as agreed upon in writing by all parties concerned, the delivery complies with the provisions of this section. An extension of the delivery period may be granted by the department upon written request.

(6) All redeliveries must be made at the warehouse or station where the agricultural commodity was received unless otherwise agreed.

(7) At the option of the depositor, the warehouse operator shall deliver the agricultural commodity at a terminal or, if mutually agreed, shall pay to the depositor the equivalent market value of the agricultural commodity on that date, less any freight and storage charges to the terminal and less other charges which may be allowed by the department.

(8) In addition to other penalties provided, a warehouse operator failing to deliver agricultural commodities within the time provided in this section is subject to suit by the person entitled to delivery of the agricultural commodities and may be ordered by a court of competent jurisdiction to pay actual damages or liquidated damages of 1/2 of 1% of the value for each day's delay.

History: En. Sec. 38, Ch. 539, L. 1983; amd. Sec. 1, Ch. 297, L. 1989; amd. Sec. 20, Ch. 452, L. 1993.

80-4-532. Delivery of grain from different warehouse. (1) Any warehouse operator owning or operating more than one warehouse in this state may deliver grain from one warehouse in settlement of warehouse receipts issued for grain stored in another warehouse when grain for storage has been presented at any warehouse in excess of its available storage capacity.

(2) Nothing in subsection (1) confers upon the warehouse operator a right to make delivery of grain of substantially lower value than that delivered for storage, though of the same technical grade, in settlement of warehouse receipts.

(3) The warehouse operator shall at all times keep on hand in bonded warehouses grain of sufficient quality and quantity to settle all outstanding warehouse receipts.

(4) Freight and other charges must be determined at the point of receipt.

History: En. Sec. 39, Ch. 539, L. 1983; amd. Sec. 20, Ch. 452, L. 1993.

80-4-533. Loss of receipts — conditions of reissue. While an original warehouse receipt is outstanding and uncanceled by the issuing warehouse operator, no other or further receipt may be issued for the agricultural commodity or any part of it covered thereby. However, if a warehouse receipt is lost or destroyed, a new receipt may be issued upon giving satisfactory security in compliance with rules adopted by the department. The new receipt must contain the same terms and conditions and must bear on its face the number and date of the receipt in lieu of which it is issued.

History: En. Sec. 40, Ch. 539, L. 1983; amd. Sec. 20, Ch. 452, L. 1993.

80-4-534. Cancellation of insurance — suspension of license. Upon cancellation of any policy of insurance required by 80-4-502 and 80-4-506, the insurance company involved shall give 30 days' advance notice to the department by certified mail, return receipt requested, of cancellation of the policy. If the policy is canceled, the department shall immediately suspend the license of such uninsured warehouse operator without a hearing, pursuant to the Montana Administrative Procedure Act. The suspension may not be removed until satisfactory evidence of the existence of an effective policy of insurance complying with the requirements of 80-4-502 and 80-4-506 has been submitted to the department or until further order by the department or a court of competent jurisdiction.

History: En. Sec. 41, Ch. 539, L. 1983; amd. Sec. 20, Ch. 452, L. 1993.

80-4-535. Repealed. Sec. 22, Ch. 76, L. 1997.

History: En. Sec. 42, Ch. 539, L. 1983.

80-4-536. Termination of storage contract — sale of agricultural commodities for charges — notice required. (1) Storage of agricultural commodities may be terminated by the depositor at any time by the payment or tender of all legal charges and the surrender of the warehouse receipt, together with a demand for delivery of the agricultural commodities or a notice to the warehouse operator to sell the commodities.

(2) In the absence of a demand for delivery, order to sell, or mutual agreement for the renewal of the storage contract entered into prior to the expiration of the storage contract,

the warehouse operator may, upon the expiration of the storage contract, sell so much of the stored agricultural commodities at the local market price at the close of business on that day as is sufficient to pay the accrued storage charges. The warehouse operator shall then issue new warehouse receipts for the balance of the agricultural commodity to the depositor upon the depositor's surrender of the original warehouse receipts. If the warehouse receipt is not returned, the warehouse operator may apply for an encumbrance to the grain settlement records for outstanding storage in lieu of reissuance of the warehouse receipt subject to the provisions of subsection (3). The warehouse operator shall notify all warehouse receipt holders who are subject to the provisions of subsection (3) of the provisions of this section 30 days prior to the end of the license year.

(3) All storage contracts on agricultural commodities evidenced by a warehouse receipt must be terminated within 3 license years. The termination date for those storage contracts must be calculated by considering the license year during which the contract was issued as the first license year, plus 2 additional license years, for a total of 3 license years.

History: En. Sec. 43, Ch. 539, L. 1983; amd. Sec. 20, Ch. 452, L. 1993; amd. Sec. 8, Ch. 76, L. 1997.

80-4-537. Examination of stored agricultural commodities. A department inspector may examine at any reasonable time during ordinary business hours any stored agricultural commodity and all parts of any warehouse if the warehouse or the agricultural commodities stored in the warehouse are not endangered by the inspections. Each warehouse operator or the operator's agent shall furnish safe and reasonable access to facilities for the examination.

History: En. Sec. 44, Ch. 539, L. 1983; amd. Sec. 20, Ch. 452, L. 1993; amd. Sec. 2587, Ch. 56, L. 2009.

80-4-538. Warehouse shortage — remedies. (1) For purposes of this section, whenever a warehouse operator stores agricultural commodities of different kinds, a receipt holder has a claim against all commodities in storage, regardless of their kind, under the warehouse operator's receipt.

(2) Whenever it appears, after an investigation, that a warehouse operator does not have in the warehouse operator's possession sufficient agricultural commodities to cover the outstanding warehouse receipts, scale weight tickets, or other evidence of storage liability issued or assumed by the warehouse operator or when a warehouse operator refuses to submit the warehouse operator's books, papers, or property to lawful inspection, the department may give notice to the warehouse operator to comply with the following requirements:

(a) to cover the shortage;

(b) to give an additional bond as requested by the department; or

(c) to submit to an inspection as the department considers necessary.

(3) If the warehouse operator fails to comply with the terms of the notice within 24 hours from the date of issuance of the notice or within a further time as the department may allow, the department may petition the district court of the first judicial district, Lewis and Clark County, or the district court in the county where the licensee's principal place of business is located, as shown by the license application, for an order:

(a) authorizing the department to seize and take possession of any or all agricultural commodities in the warehouse or warehouses owned, operated, or controlled by the warehouse operator and of all books, papers, and property of all kinds used in connection with the conduct or the operation of the warehouse business and any materials that pertain in any way to that business; and

(b) enjoining the warehouse operator from interfering with the department in the discharge of its duties as required by this part.

(4) Upon taking possession, the department shall give written notice of its action to the surety on the bond of the warehouse operator and may notify the holders of record, as shown by the warehouse operator's record, of all warehouse receipts or scale weight tickets issued for agricultural commodities to present their warehouse receipts or other evidence of deposits for inspection or to account for the receipts or evidence of deposits. The department may cause an audit to be made of the affairs of the warehouse, including but not limited to the agricultural commodities of which there is an apparent shortage, to determine the amount of shortage and, if possible, to compute the shortage as to each depositor as shown by the warehouse operator's records. The department shall notify the warehouse operator and the surety on the bond of the

amount of the shortage and notify each affected depositor by sending notices to the depositor's last-known address as shown by the records of the warehouse operator.

(5) The department shall retain possession of the agricultural commodities in the warehouse or warehouses and the books, papers, and property of the warehouse operator until:

(a) the warehouse operator or the surety on the bond has satisfied the claims of all holders of warehouse receipts or other evidence of deposits;

(b) the surety on the bond has satisfied all claims pro rata, if the shortage exceeds the amount of the bond; or

(c) the department is ordered by the court to surrender possession.

(6) If during or after the audit provided for in this section or at any other time the department has evidence that the warehouse operator is insolvent or is unable to satisfy the claims of all holders of warehouse receipts or other evidence of deposits, the department may petition the first judicial district court for the appointment of the department to operate or liquidate the business of the warehouse.

(7) At any time within 10 days after the department takes possession of any agricultural commodities or the books, papers, or property of any warehouse, the warehouse operator may serve notice on the department to appear in the first judicial district court at a time to be fixed by the court, and show cause why the agricultural commodities, books, papers, and other property should not be restored to the warehouse operator's possession.

(8) All necessary expenses incurred by the department in carrying out the provisions of this section may be recovered at the discretion of the department from the assets of the licensee, from the agricultural commodities held by the licensee under warehouse receipt, or in a separate civil action brought by the department in the first judicial district court.

(9) As a part of the expenses incurred, the department is authorized to include the cost of adequate liability insurance necessary to protect the department, its officers, and others engaged in carrying out this part.

(10) The department shall set by rule the time limits for:

(a) notification of its action on the surety bond of a warehouse operator;

(b) the holders of warehouse receipts or scale weight tickets to provide to the department evidence of deposit; and

(c) satisfaction of the claims of all holders of warehouse receipts or other evidence of deposits.

History: En. Sec. 45, Ch. 539, L. 1983; amd. Sec. 5, Ch. 299, L. 1991; amd. Sec. 10, Ch. 452, L. 1993.

80-4-539. Inspection by department. (1) The department may investigate any warehouse operator who has applied for or who had previously been issued a license and may inspect the operator's warehouse for purposes of determining compliance with this part and rules of the department.

(2) The department may investigate any warehouse operator or inspect any warehouse that it has reasonable cause to believe is operating in violation of this part and rules of the department.

History: En. Sec. 46, Ch. 539, L. 1983; amd. Sec. 20, Ch. 452, L. 1993; amd. Sec. 2588, Ch. 56, L. 2009.

Part 6
Agricultural Commodity Dealers

80-4-601. Commodity dealer license requirements — financial responsibility. (1) A person may not engage in the business of a commodity dealer in this state without first having obtained a license issued by the department.

(2) An application for a license to engage in business as a commodity dealer must be filed with the department and must be on a form prescribed by the department.

(3) (a) A license application must include the following:

(i) the name of the applicant;

(ii) the names of the officers and directors if the applicant is a corporation;

(iii) the names of the partners if the applicant is a partnership;

(iv) the location of the principal places of business;

(v) a sufficient and valid bond as specified in 80-4-604, plus the bond specified in subsection (5)(a)(i) or (5)(a)(ii) if applicable, or as specified in subsection (5)(a)(iii);

(vi) a complete financial statement prepared by a certified public accountant according to generally accepted accounting principles, setting forth the applicant's cost of all commodities purchased in Montana, assets, liabilities, and equity; and

(vii) any other reasonable information the department finds necessary to carry out the provisions and purpose of this part.

(b) In determining the value of assets for the purposes of commodity dealer licensing:

(i) the value of the assets must be shown at original cost less depreciation, except that upon written request filed with the department, the director may allow asset valuations in accordance with a competent appraisal; and

(ii) credit may be given for insurable property, such as buildings, machinery, equipment, and merchandise inventory, only to the extent that the insurable property is protected against loss or damage by fire by insurance in the form of lawful policies issued by one or more insurance companies authorized to do business and subject to service of process in suits brought in this state.

(4) Except as provided in subsection (5), in order to receive and retain a commodity dealer's license, a commodity dealer shall have and maintain:

(a) equity of $50,000;

(b) positive working capital; and

(c) the bond required under 80-4-604.

(5) (a) An applicant for a commodity dealer's license:

(i) that meets the condition specified in subsection (4)(c) and has maintained positive equity but does not meet the condition specified in subsection (4)(a) shall provide the department with additional bonding in the amount of $2,000 for each $1,000 or fraction of $1,000 that the applicant's equity is less than $50,000; and

(ii) that meets the condition specified in subsection (4)(c) but does not meet the condition specified in subsection (4)(b) shall provide the department with additional bonding in the amount of $2,000 for each $1,000 or fraction of $1,000 that the applicant's current liabilities exceed the applicant's current assets; or

(iii) that cannot or chooses not to meet the requirements of subsections (4)(a), (4)(b), and (4)(c) may, at the applicant's discretion and with the consent of the department, provide the department with a bond in the amount of 110% of the value of commodities the applicant or dealer intends to purchase during the term of the license or 110% of the value of commodities the dealer purchased during the preceding 12 months, whichever is greater. The minimum bond is $20,000.

(b) An applicant or commodity dealer that provides a bond under subsection (5)(a)(iii) is exempt from the bonding requirement in 80-4-604(2).

(c) If a commodity dealer posts a bond or equivalent under subsection (5)(a)(iii) and at any time has unpaid contracts that exceed 90% of the dealer's bond or equivalent, the dealer shall either pay off contracts of sufficient value or increase the bond amount so that the total value of the unpaid contracts is less than 90% of the bond or equivalent.

(6) A company may post a bond required by this part for a subsidiary company if the corporate bonds are rated as Aa3 or better by Moody's investors service, inc., or as AA- or better by Standard and Poor's financial services and are issued with the full credit of the parent corporation.

(7) (a) A company or its subsidiary may request that the department waive the requirement to file a complete financial statement pursuant to subsection (3)(a)(vi) for a licensing year, the deficit bonding requirements in 80-4-405(1), or both, if the company:

(i) has been licensed for 1 year;

(ii) has corporate bonds rated as Baa3 or better by Moody's investors service, inc., as BBB- or better by Standard and Poor's financial services, or as investment grade by an equivalent rating system as determined by department rule; and

(iii) posts the maximum bond amount required by 80-4-405.

(b) The director shall grant or deny the request within 14 days.

(8) (a) A company or its subsidiary may request that the department waive the requirement of subsection (4)(a) or (4)(b), or both, if the company:

(i) has been licensed for 1 year;

(ii) posts the maximum bond amount required by 80-4-405; and

(iii) includes a profit or loss statement from the company's or subsidiary's previous fiscal year that shows operational income equal to or in excess of the value of commodities intended to be purchased during the term of the commodity dealer license.

(b) The director shall grant or deny the request within 14 days.

(9) A company whose business structure includes one or more subsidiary locations may file the parent company's financial statement to meet the requirement of subsection (3)(a)(vi). Financial statements are not required for each subsidiary location.

(10) The department shall adopt rules relating to the form and time of filing of financial statements. The department may require additional information or verification regarding the financial resources of the applicant and the applicant's ability to pay producers for agricultural commodities purchased from them.

History: En. Sec. 47, Ch. 539, L. 1983; amd. Sec. 5, Ch. 578, L. 1985; amd. Sec. 2, Ch. 157, L. 1989; amd. Sec. 7, Ch. 175, L. 2011; amd. Sec. 23, Ch. 169, L. 2015; amd. Sec. 3, Ch. 302, L. 2019.

80-4-602. License fees. (1) Except as provided in subsection (3), the department shall collect an annual fee of $232 per facility for each commodity dealer license.

(2) If, after evaluation of the commodity dealer/public warehouse operator program, the department determines that revenue from license fees is inadequate to accomplish the purposes of this chapter, the department may by rule increase the license fees, but the fee may not exceed $500 for a facility.

(3) The license fee for a commodity dealer who is licensed as a seed dealer under 80-5-130(4) is $100 a year if the majority of the dealer's annual expenditures for agricultural commodities is for agricultural seed intended for resale as agricultural seed.

(4) All fees collected under this section must be placed in the commodity dealer/public warehouse operators account.

History: En. Sec. 48, Ch. 539, L. 1983; amd. Sec. 5, Ch. 620, L. 1987; amd. Sec. 11, Ch. 452, L. 1993; amd. Sec. 9, Ch. 76, L. 1997.

80-4-603. License issuance — renewal — expiration. (1) The department shall issue a license when the applicant has filed the application and complied with the terms and conditions of this part and the rules of the department.

(2) A commodity dealer's license may be renewed annually by submitting all required licensing documents.

(3) A commodity dealer's license that has expired may be reinstated by the department upon receipt of all licensing documents required and a penalty fee in the amount of $50 if the document is filed within 30 days from the date of expiration of the commodity dealer's license. At no time during the 30-day period or thereafter may the person act as a commodity dealer. All license applications received after the 30-day penalty period must be considered original applications.

(4) A commodity dealer's license is not transferable.

(5) Any partnership with a partner or any corporation that has an officer, director, or majority stockholder owning at least 10% of issued stock who has had a license revoked under this part or the United States Warehouse Act is subject to the provisions of 80-4-421.

History: En. Sec. 49, Ch. 539, L. 1983.

80-4-604. Bonding requirement amounts — cancellation. (1) An applicant for a license to operate as a commodity dealer shall, before a license may be issued, file with the department a surety bond or its equivalent, as established by department rule, payable to the state.

(2) Except as provided in 80-4-601(5)(b) and subsection (3) of this section:

(a) the bond for a commodity dealer may not exceed 2% of the value of the agricultural commodities purchased by the commodity dealer from the producer during the previous 12-month period;

(b) the bond for all new applicants is 2% of the estimated value of all agricultural commodities to be purchased during the coming 12-month period; and

(c) the minimum amount of bond required by any commodity dealer is $20,000 and the maximum is prescribed in 80-4-405.

(3) (a) A commodity dealer acting as a broker and contracting or otherwise conducting business with a commodity dealer licensed in Montana shall post the minimum amount of bond pursuant to subsection (2)(c).

(b) A commodity dealer acting as a broker and contracting or otherwise conducting business with a buyer not licensed as a commodity dealer in Montana shall:

(i) post the maximum amount of bond required by 80-4-405; and

(ii) be held jointly liable with the buyer for failure to comply with terms of a written contract or failure to pay for a commodity purchase under an oral agreement pursuant to 80-4-612.

(4) A surety shall notify the commodity dealer and the department by certified mail at least 60 days prior to the cancellation of the bond. A commodity dealer's bond filed with the department is continuous until canceled by the surety upon 60 days' notice; however, cancellation does not terminate any liability of the surety incurred prior to the date of cancellation.

History: En. Sec. 50, Ch. 539, L. 1983; amd. Sec. 6, Ch. 578, L. 1985; amd. Sec. 6, Ch. 299, L. 1991; amd. Sec. 12, Ch. 452, L. 1993; amd. Sec. 8, Ch. 175, L. 2011; amd. Sec. 4, Ch. 302, L. 2019.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

80-4-605. Posting of license. The commodity dealer's license must be posted in a conspicuous location at the dealer's place of business. A duplicate commodity dealer's license must be posted at each location at which records are maintained for transactions of the commodity dealer and also within each truck operated by the dealer in the state.

History: En. Sec. 51, Ch. 539, L. 1983; amd. Sec. 2589, Ch. 56, L. 2009.

80-4-606. Inspection of premises, books, and records. (1) The department may at any reasonable time inspect the premises and records of any commodity dealer used in the conduct of the commodity dealer's business. A commodity dealer shall, upon request of the director, furnish to the department at any reasonable time and place all books, accounts, records, and papers relating to agricultural commodity transactions within the state, including those pertaining to the collecting, reporting, and paying of authorized assessments pursuant to Title 80, chapter 4 or 11.

(2) A commodity dealer shall retain and maintain the records provided for in subsection (1) for a period of 5 years from the date of the transaction.

(3) If there exists good cause to believe that a person is doing business as a commodity dealer without a license, the department may inspect the books, papers, and records of the person that pertain to agricultural commodity purchases.

History: En. Sec. 52, Ch. 539, L. 1983; amd. Sec. 2, Ch. 131, L. 2005.

80-4-607. Insufficient checks — prohibition. No person engaged in business as a commodity dealer may draw or deliver any check, draft, or order for payment of money upon any bank for the purchase of agricultural commodities when at the time of drawing or delivery the maker or drawer does not have sufficient funds or has failed to arrange for credit with the bank or depository for payment in full upon presentation of the check, draft, or order for payment of money. The word "credit" as used in this section means an arrangement or understanding with the bank or depository for payment of the check, draft, or order.

History: En. Sec. 53, Ch. 539, L. 1983.

80-4-608. Payment of purchase price — definitions. (1) A person required to be licensed as a commodity dealer shall pay 90% of the purchase price to the owner or the owner's agent for agricultural commodities upon delivery and demand by the owner or agent and the remaining 10% not later than 30 days after delivery by the owner or agent unless otherwise agreed to in writing by the parties. Title to agricultural commodities sold to a commodity dealer under this section transfers to the commodity dealer upon physical delivery of the commodity.

(2) As used in this section, the following definitions apply:

(a) "Delivery" means the transfer by the seller of title to and possession of agricultural commodities to the commodity dealer or to another person in accordance with the agreement between the seller and the commodity dealer.

(b) "Payment" means the actual payment or tender of payment of the agreed purchase price by the commodity dealer to the seller.

History: En. Sec. 54, Ch. 539, L. 1983; amd. Sec. 13, Ch. 452, L. 1993.

80-4-609 through 80-4-611 reserved.

80-4-612. Commodity dealer defaults — remedies. (1) If the department finds that a commodity dealer has failed to comply with the terms of a written contract or has failed to pay for a commodity purchase under an oral agreement in the manner and within the time provided in 80-4-608, the department may petition the district court of the first judicial district, Lewis and Clark County, for an order authorizing the department to seize and take possession of:

(a) any agricultural commodities in the facilities owned, operated, or controlled by the commodity dealer;

(b) all books, papers, and property used in connection with the operation of the commodity dealer business; and

(c) any material that pertains in any way to that business.

(2) If during or after an audit or at any other time the department has evidence that the commodity dealer is insolvent or is unable to satisfy the claims of all commodity dealer creditors covered by the bond, the department may petition the district court of the first judicial district, Lewis and Clark County, for the appointment of the department to operate or liquidate the business of the commodity dealer.

(3) All necessary expenses incurred by the department in carrying out the provisions of this part may be recovered at the discretion of the department from:

(a) the bond;

(b) the assets of the licensee;

(c) the agricultural commodities delivered for purchase but not yet paid for; or

(d) in a separate civil action brought by the department in the first judicial district court.

(4) The department is authorized to include as part of the recoverable expenses the cost of adequate liability insurance necessary to protect the department, its officers, and others engaged in carrying out the provisions of this part.

History: En. Sec. 7, Ch. 299, L. 1991; amd. Sec. 14, Ch. 452, L. 1993.

80-4-613. Records. (1) A commodity dealer shall provide evidence of delivery, such as scale tickets, for all agricultural commodities purchased from a producer.

(2) A commodity dealer shall keep daily position records or their equivalent showing purchases, deliveries, or payments to producers.

History: En. Sec. 8, Ch. 299, L. 1991.

80-4-614. Claims on bond by injured person. A person injured by the breach of an obligation for which the bond is given may file a claim with the department. Claims will be accepted only from producers and for agricultural commodities grown in Montana.

History: En. Sec. 9, Ch. 299, L. 1991.

Part 7
Inspection and Grading

80-4-701. Official agricultural commodity inspectors, samplers, and weighers — designation of seasonal inspection points — assignment of inspectors. (1) The department shall provide inspectors, samplers, and weighers to enforce this part. At all inspection points designated by the department, the department shall provide sufficient official agricultural commodity inspectors, samplers, and weighers to inspect and weigh all agricultural commodities subject to state inspection.

(2) The department may, during the grain-marketing season, appoint inspectors to visit the grain-growing districts to investigate the grading, dockage, and weighing of grain and to enforce the rules of the department.

(3) Expenditures for the inspection and weighing at the points designated by the department may not exceed total fee receipts at those points.

History: En. Sec. 55, Ch. 539, L. 1983; amd. Sec. 10, Ch. 76, L. 1997.

80-4-702. Qualifications of official agricultural commodity inspectors, samplers, and weighers. Official agricultural commodity inspectors, samplers, and weighers must be qualified in accordance with the Grain Standards Act. Official agricultural commodity inspectors, samplers, and weighers may not be directly or indirectly interested in the handling, sorting, shipping, purchasing, or selling of agricultural commodities, grain, or grain commodities.

History: En. Sec. 56, Ch. 539, L. 1983; amd. Sec. 11, Ch. 76, L. 1997.

80-4-703. Penalty for misconduct. (1) An official agricultural commodity inspector, sampler, or weigher who is guilty of neglect of duty, who knowingly or carelessly inspects, samples, or weighs agricultural commodities improperly, or who directly or indirectly accepts any money or other consideration for neglect of duty or improper performance of duty is guilty of official misconduct and is punishable as provided in 45-7-401.

(2) A person who improperly influences or attempts to improperly influence an official agricultural commodity inspector, sampler, or weigher in the performance of the inspector's, sampler's, or weigher's duties is guilty of bribery and is punishable as provided in 45-7-101.

(3) Upon conviction of an offense described in subsection (1), an official agricultural commodity inspector, sampler, or weigher must be removed by the department pursuant to procedures established by department rule.

History: En. Sec. 57, Ch. 539, L. 1983; amd. Sec. 12, Ch. 76, L. 1997.

80-4-704. Establishment of standard agricultural commodity grades. (1) The department may by rule establish standard grades to apply to all agricultural commodities for which a United States department of agriculture grade has not been established and that are bought by commodity dealers and stored or handled by warehouses in this state. The department shall adopt as state grade and dockage standards all grades for agricultural commodities established by the United States department of agriculture. For purposes of this chapter, any reference to a grade also includes a reference to a protein analysis or any other factor provided by department rule if the analysis affects the purchase price.

(2) Agricultural commodity standards adopted by the department do not apply to agricultural commodities contracted for before the effective date of the adoption of the standards.

History: En. Sec. 58, Ch. 539, L. 1983; amd. Sec. 13, Ch. 76, L. 1997.

Cross-References

U.C.C. — exclusion or modification of warranties as to disease-free seed, 30-2-316.

80-4-705. Rules governing dockage — sample inspection. The department shall adopt rules governing the dockage on inferior grades, which shall apply in all executory contracts entered into after their adoption. If the purchase price depends on terminal weight or grade, the rules control the dockage insofar as dockage affects the purchase price. The department shall also provide for sample inspection of agricultural commodities, adopt rules governing sample inspection, and provide that the sample inspection, when made, is final.

History: En. Sec. 59, Ch. 539, L. 1983; amd. Sec. 14, Ch. 76, L. 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

80-4-706. Special inspection of agricultural commodities. (1) If agricultural commodities are sold based on Montana grade and are to be shipped from places not provided with state inspection, the buyer, seller, or person making the delivery may have the agricultural commodities inspected by notifying an inspector, who shall have them inspected. After inspection, the inspector shall issue, on request of the buyer, seller, or person delivering the agricultural commodity, an inspector's certificate showing the grade of the agricultural commodity. The person calling for the inspection shall pay a reasonable fee fixed by department rule.

(2) An agricultural commodity that is shipped to points in this state where no inspection is maintained may be inspected on request of either the buyer or seller, and a certificate may be issued showing the grade of the agricultural commodity. The charge for the service must at least equal the entire cost of providing it and must be paid by the party calling for the inspection.

History: En. Sec. 60, Ch. 539, L. 1983; amd. Sec. 15, Ch. 76, L. 1997.

80-4-707. Repealed. Sec. 22, Ch. 76, L. 1997.

History: En. Sec. 61, Ch. 539, L. 1983.

80-4-708. Examination of agricultural commodity cars or trucks at destination. (1) An official agricultural commodity inspector, sampler, or weigher, before opening the doors or lids of a car or truck containing agricultural commodities upon its arrival at any of the places designated by the department for inspection, shall first ascertain the condition of the car or truck and determine whether any leakages have occurred while the car or truck was in transit, determine whether the doors or lids were properly secured and sealed at the point of shipment, and make a record of those facts in all cases, giving seal numbers.

(2) After examinations have been made, the official agricultural commodity inspector, sampler, or weigher shall securely close and reseal the opened doors or lids, using the special seal of the department.

(3) A record must be kept by the official agricultural commodity inspectors, samplers, or weighers of all original seals broken, the number of seals, and the date when broken. An official agricultural commodity inspector, sampler, or weigher shall break the seal, weigh, and superintend the loading of all cars or trucks of agricultural commodities subject to inspection. Any other person who breaks the seal or officially weighs the cars or trucks of agricultural commodities is guilty of a misdemeanor.

History: En. Sec. 62, Ch. 539, L. 1983; amd. Sec. 16, Ch. 76, L. 1997.

80-4-709. Protein testing laboratory. (1) The department shall maintain an official protein testing laboratory so designated by the Grain Standards Act.

(2) No other laboratory may officially certify the grade or protein content of grain unless the laboratory is licensed by the department under rules adopted by the department.

(3) The department shall by rule determine the standards of analysis controlling all other official protein testing laboratories in this state.

(4) The department may by rule determine the form of protein certificates issued by it.

History: En. Sec. 63, Ch. 539, L. 1983.

80-4-710. Repealed. Sec. 22, Ch. 76, L. 1997.

History: En. Sec. 64, Ch. 539, L. 1983; amd. Sec. 20, Ch. 452, L. 1993.

80-4-711. Agricultural commodity sampling — appeal procedure. (1) At the time of delivery of an agricultural commodity to a warehouse operator or commodity dealer for storage or sale, each warehouse operator or commodity dealer shall take a representative sample from each load of agricultural commodity delivered and preserve the sample in a moistureproof container with the owner's name marked on the container. A written agreement must be given to the depositor authorizing the depositor to state a preference of grading facility. The options provided for grading facilities in the agreement must include but may not be limited to the state grain laboratory. The written agreement must specify the time period to which the agreement applies. If the state grain lab is chosen as the grading facility, a composite sample consisting of a minimum of 1½ quarts or 1,050 grams of the representative sample must be submitted directly to the state grain laboratory for analysis as to grade, dockage, protein, and other factors that the laboratory is able to analyze that affect the purchase price. The warehouse operator or commodity dealer shall retain a minimum of 1½ quarts or 1,050 grams of the remaining sample for 60 days.

(2) All fees and other charges associated with the grain sample analysis must reflect as nearly as possible the actual cost of the services.

(3) If a request for a state grain laboratory analysis is not made pursuant to subsection (1) and the depositor, warehouse operator, or commodity dealer is dissatisfied with the results of a private analysis, the depositor, warehouse operator, or commodity dealer may appeal to the state grain laboratory. When an appeal is made, the warehouse operator or commodity dealer shall submit 1½ quarts or 1,050 grams of the representative sample to the state grain laboratory for appeal analysis.

(4) If the depositor, warehouse operator, or commodity dealer is dissatisfied with the results of a state grain laboratory analysis, as provided in subsection (1) or (3), the depositor, warehouse operator, or commodity dealer may appeal to the FGIS, United States department of agriculture. A FGIS appeal must be made within 10 working days of the state grain laboratory's analysis. The sample for FGIS appeal must be a portion of that agricultural commodity retained by the state grain laboratory when it conducted its analysis. The results on the state grain

laboratory appeal sample are final and binding. In the absence of an appeal to FGIS or in the case of an agricultural commodity for which there are no FGIS standards, the state grain laboratory's analysis is final and binding.

(5) Each warehouse operator or commodity dealer shall post in a conspicuous place a placard, issued by the department, stating the procedures provided for in this section and a partial list of the fees established in 80-4-721. The department shall provide space on the placard on which the warehouse operator or commodity dealer is required to list anticipated shipping and handling fees.

(6) All samples submitted for analysis are the property of the state grain laboratory and subject to its disposition.

(7) An agricultural commodity purchased for resale as seed is exempt from the requirements of this section.

(8) A producer of malting barley may by contract waive the right to submit a sample to the state grain laboratory provided in this section.

History: En. Sec. 21, Ch. 76, L. 1997; amd. Sec. 1, Ch. 445, L. 2003; amd. Sec. 1, Ch. 19, L. 2009.

80-4-712 through 80-4-720 reserved.

80-4-721. Fees for inspection, testing, and weighing agricultural commodities — disposition — investment. (1) The department shall by rule fix the fees for inspection, testing, and weighing of agricultural commodities.

(2) All fees and other charges fixed by rule, including fees for the inspection, grading, weighing, and protein testing of agricultural commodities, must reflect as nearly as possible the actual cost of the services.

(3) All fees and charges must be paid to the department and deposited with the state treasurer. The state treasurer shall place all money in the state special revenue fund. Fees deposited in the state special revenue fund must be used to pay approved claims for expenses incurred in inspecting, grading, weighing, and protein testing of agricultural commodities.

(4) The department may direct the board of investments to invest funds from the state special revenue fund pursuant to the provisions of the unified investment program for state funds. The income from the investments must be credited to the proper department account in the state special revenue fund.

(5) All fees collected under this part must be expended for the purposes of this part as provided in Article XII, section 1, of the Montana constitution.

History: En. Sec. 65, Ch. 539, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 2, Ch. 297, L. 1989; amd. Sec. 20, Ch. 452, L. 1993; amd. Sec. 17, Ch. 76, L. 1997; amd. Sec. 2, Ch. 445, L. 2003.

80-4-722. Records of inspection. (1) The official agricultural commodity inspectors, samplers, and weighers have exclusive control at places provided for state inspection of the weighing and grading of agricultural commodities to be inspected. Suitable books and records must be kept in which must be entered an accurate record of every carload or truckload of agricultural commodities inspected or weighed by them. The records must show for each car or truck:

(a) the number or other designation of the car or truck;

(b) the net weight of the agricultural commodity;

(c) the kind of agricultural commodity and its grade and, if graded below standard No. 1 grade, the reason for the grade.

(2) For each carload or truckload of agricultural commodities, the official agricultural commodity inspector shall give a certificate of inspection, showing the kind and grade of the agricultural commodity, the reason for all grades below No. 1, and the amount to be allowed for dockage, if any. For each carload or truckload weighed, the weigher shall give a weight certificate showing the true weight and containing a statement on the condition of the car or truck and evidences of leakage or damage, if any.

(3) The inspection and weight certificates must be made available to the warehouse loading or unloading the agricultural commodity, the shipper or the shipper's agent, and the railroad company or other carrier by which the agricultural commodity was shipped or carried.

(4) Official agricultural commodity inspectors and weighers shall also keep an accurate record of all appeals and decisions and a complete record of every official act, which books and records must be open to inspection by any party of interest.

History: En. Sec. 66, Ch. 539, L. 1983; amd. Sec. 18, Ch. 76, L. 1997.

80-4-723. Repealed. Sec. 22, Ch. 76, L. 1997.

History: En. Sec. 67, Ch. 539, L. 1983; amd. Sec. 20, Ch. 452, L. 1993.

80-4-724. Coloration of agricultural commodities treated with injurious or toxic substances — exception. (1) Any agricultural commodity treated with any injurious or toxic substance or chemical must at the same time be colored or dyed a color contrasting with the natural color of the agricultural commodity so that the treated agricultural commodity is readily identifiable as having been treated with an injurious or toxic substance or chemical. This subsection does not apply to the application of pesticides to agricultural commodities according to label directions for the treatment of pests that might be present in the agricultural commodity.

(2) A person who fails to comply with the requirements of this section is subject to the penalty provisions of 80-4-429.

History: En. Sec. 68, Ch. 539, L. 1983; amd. Sec. 19, Ch. 76, L. 1997.

80-4-725. Sale or offering for sale of treated product prohibited. A person may not sell or offer for sale an agricultural commodity that has been treated with any injurious or toxic substance or chemical unless the agricultural commodity has been colored or dyed a color contrasting with the natural color of the agricultural commodity. Section 80-4-724 and this section do not apply to the treatment of an agricultural commodity solely for the killing of insects that might be present. A person violating this section is guilty of a misdemeanor.

History: En. Sec. 69, Ch. 539, L. 1983; amd. Sec. 20, Ch. 76, L. 1997.

80-4-726. Copies of grades and rules to be furnished and displayed by warehouse operators. (1) The department shall, immediately after the adoption of rules establishing grades fixing dockage, supply all warehouse operators with a copy of the grades and rules. A warehouse operator shall keep a copy on file in a convenient place in each warehouse. If an office is maintained in connection with the warehouse, a copy of the grades and rules shall be kept on file in the office. A placard notice must be posted in a conspicuous place in every warehouse and office, reading "A copy of Montana grades and rules is on file here for information of interested parties".

(2) A warehouse operator shall exhibit a copy of the grades and rules to any interested party at any warehouse or office and permit the interested party to examine the copy.

History: En. Sec. 70, Ch. 539, L. 1983; amd. Sec. 20, Ch. 452, L. 1993.

80-4-727. Repealed. Sec. 22, Ch. 76, L. 1997.

History: En. Sec. 71, Ch. 539, L. 1983.

CHAPTER 5
AGRICULTURAL SEED AND PATENTED PLANT MATERIAL

Part 1 — Seed Labeling — Licensing — Certification

80-5-101. Repealed.
80-5-102. Repealed.
80-5-103. Renumbered 80-5-125.
80-5-104. Repealed.
80-5-105. Renumbered 80-5-134.
80-5-106. Repealed.
80-5-107. Repealed.
80-5-108. Renumbered 80-5-126.
80-5-109. Renumbered 80-5-127.
80-5-110. Renumbered 80-5-128.
80-5-111. Renumbered 80-5-129.
80-5-112. Repealed.
80-5-113. Repealed.
80-5-114 through 80-5-119 reserved.
80-5-120. Definitions.

80-5-121. Renumbered 80-5-133.
80-5-122. Renumbered 80-5-138.
80-5-123. Label requirements for agricultural, vegetable, flower, and indigenous seeds.
80-5-124. Exemptions.
80-5-125. Exchange of seed between labelers.
80-5-126. Analysis by seed laboratory — reports.
80-5-127. Testing of submitted samples.
80-5-128. Laboratory testing of samples — fees.
80-5-129. Certificate of test presumptive evidence.
80-5-130. Licensing — application — fee.
80-5-131. Assessment on sales into Montana — reporting — rulemaking.
80-5-132. Deposit of funds — seed account.
80-5-133. Inspection.
80-5-134. Prohibitions.
80-5-135. Screenings — restrictions on movements.
80-5-136. Administration — stop sale order — violation — cancellation of license — enforcement.
80-5-137. Cooperation and agreements.
80-5-138. Publication of reports.
80-5-139. Rules — promulgated by department.
80-5-140. Application of sections.
80-5-141. Rules by Montana state university-Bozeman — certification agencies.
80-5-142. Certification work on self-supporting basis.
80-5-143. Withholding certification.
80-5-144. Unlawful use of certification — penalty.

Part 2 — Licensing (Renumbered and Repealed)

Part 3 — Certification (Renumbered)

Part 4 — Seed Potato Disease Control Act

80-5-401. Short title.
80-5-402. Definitions.
80-5-403. Imported seed potatoes — restrictions — exceptions.
80-5-404. Planting noncertified seed potatoes prohibited — exceptions.
80-5-405. Enforcement — penalty.

Part 5 — Agricultural Seed Contract Alternative Dispute Resolution

80-5-501. Requirement and effect of alternative dispute resolution — exemption.
80-5-502. Notice of alternative dispute resolution.
80-5-503. Commencement of legal action — evidence.
80-5-504. Alternative dispute resolution council.
80-5-505. Authority of alternative dispute resolution council — compensation.
80-5-506. Alternative dispute resolution procedure.
80-5-507. Findings.
80-5-508. Costs of alternative dispute resolution.
80-5-509. Program administration and rulemaking.
80-5-510. Administration of fees.

Part 6 — Patented Plant Material

80-5-601. Legislative findings — purpose.
80-5-602. Definitions.
80-5-603. Suspected violations — sampling procedures — confidentiality.
80-5-604. Mediation required before judicial action.
80-5-605. Venue.
80-5-606. Rulemaking.

Chapter Cross-References

Department of Agriculture and special levies created, Art. XII, sec. 1, Mont. Const.

Taxation provisions — tax exemption provisions, 15-6-201, 15-6-206, 15-6-207.

Taxation provisions — agricultural appraisal — valuation of land as agricultural, Title 15, ch. 7, part 2.

Land use — Realty Transfer Act — exceptions for agricultural lands, 15-7-307.

Land use — assessment rates for agricultural lands — market value standard — valuation exception for agricultural implements and machinery, 15-8-111.

Financial obligations — obligations on "seed loans" — County Treasurers' lists of delinquent loans, 15-16-701.

Taxation provisions — individual income tax exceptions for farmers and ranchers, 15-30-2512.

Taxation provisions — corporate income tax exemption for agricultural and horticultural organizations, 15-31-102.

Taxation provisions — gasoline and special fuel taxes, Title 15, ch. 70, part 4.

Agricultural vehicle provisions — exemption of farm implements from certain identification requirements, 61-3-431, 69-12-408.

Agricultural vehicle provisions — motor vehicle license exemption for tractor drivers, 61-5-104, 61-8-101.
Agricultural vehicle provisions — exceptions to equipment requirements, 61-9-109, 61-9-215, 61-9-406, 61-10-102, 61-10-122, 61-10-123.
Agricultural vehicle provisions — slow-moving vehicles — equipment requirements, 61-9-415.
Vehicle loaded with perishable seed potatoes — when authorities may restrict right to use roadway, 61-10-128.
Agricultural vehicle provisions — special fees for certain farm vehicles, 61-10-206.
Land use — relocation of power lines upon installation of agricultural improvements — sprinkler irrigation systems, Title 69, ch. 4, part 4.
Land use — relocation of farm persons displaced when land condemned, Title 70, ch. 31, parts 1 and 3.
Agricultural liens — threshers' liens, 71-3-124; Title 71, ch. 3, part 8.
Agricultural liens — farm laborers' liens, Title 71, ch. 3, part 4.
Agricultural liens — crop liens for seed or grain and liens for hail insurance, Title 71, ch. 3, part 7.
Agricultural liens — agisters' liens and liens for service, Title 71, ch. 3, part 12.
Land use — land use planning boards, Title 76, ch. 1.
Land use — local regulation of subdivisions — agriculture-related provisions, 76-3-207, 76-3-401, 76-3-608.
Land use — state lands classification, Title 77, ch. 1, part 4.
Land use — conflicting or harmonious leasing of state lands for mining and agricultural purposes, 77-3-104, 77-3-120, 77-3-207.

Part 1
Seed Labeling — Licensing — Certification

Part Cross-References
Definitions relating to agricultural seed, 80-5-120.

80-5-101. Repealed. Sec. 19, Ch. 373, L. 1987.
History: En. Sec. 1, Ch. 361, L. 1969; amd. Sec. 1, Ch. 390, L. 1973; R.C.M. 1947, 3-802.1; amd. Sec. 1, Ch. 464, L. 1983.

80-5-102. Repealed. Sec. 16, Ch. 345, L. 1999.
History: En. Sec. 2, Ch. 361, L. 1969; amd. Sec. 2, Ch. 390, L. 1973; amd. Sec. 10, Ch. 13, L. 1977; R.C.M. 1947, 3-802.2(1); amd. Sec. 2, Ch. 464, L. 1983; amd. Sec. 2, Ch. 373, L. 1987.

80-5-103. Renumbered 80-5-125. Code Commissioner, 1999.

80-5-104. Repealed. Sec. 16, Ch. 345, L. 1999.
History: En. Sec. 3, Ch. 361, L. 1969; R.C.M. 1947, 3-802.3; amd. Sec. 3, Ch. 464, L. 1983; amd. Sec. 4, Ch. 373, L. 1987.

80-5-105. Renumbered 80-5-134. Code Commissioner, 1999.

80-5-106. Repealed. Sec. 19, Ch. 373, L. 1987.
History: En. Sec. 5, Ch. 361, L. 1969; Sec. 3-821, R.C.M. 1947; amd. and redes. 3-802.5 by Sec. 46, Ch. 218, L. 1974; R.C.M. 1947, 3-802.5.

80-5-107. Repealed. Sec. 16, Ch. 345, L. 1999.
History: En. Sec. 3, Ch. 12, L. 1913; re-en. Sec. 3595, R.C.M. 1921; re-en. Sec. 3595, R.C.M. 1935; amd. Sec. 4, Ch. 88, L. 1939; amd. Sec. 6, Ch. 361, L. 1969; R.C.M. 1947, 3-803; amd. Sec. 4, Ch. 464, L. 1983; amd. Sec. 6, Ch. 373, L. 1987.

80-5-108. Renumbered 80-5-126. Code Commissioner, 1999.

80-5-109. Renumbered 80-5-127. Code Commissioner, 1999.

80-5-110. Renumbered 80-5-128. Code Commissioner, 1999.

80-5-111. Renumbered 80-5-129. Code Commissioner, 1999.

80-5-112. Repealed. Sec. 16, Ch. 345, L. 1999.
History: En. Sec. 5, Ch. 12, L. 1913; re-en. Sec. 3597, R.C.M. 1921; re-en. Sec. 3597, R.C.M. 1935; amd. Sec. 6, Ch. 88, L. 1939; amd. Sec. 3, Ch. 155, L. 1951; amd. Sec. 42, Ch. 218, L. 1974; amd. Sec. 13, Ch. 13, L. 1977; R.C.M. 1947, 3-805(2); amd. Sec. 5, Ch. 464, L. 1983; amd. Sec. 11, Ch. 373, L. 1987.

80-5-113. Repealed. Sec. 16, Ch. 345, L. 1999.
History: En. Sec. 4, Ch. 12, L. 1913; re-en. Sec. 3596, R.C.M. 1921; amd. Sec. 2, Ch. 110, L. 1929; re-en. Sec. 3596, R.C.M. 1935; amd. Sec. 5, Ch. 88, L. 1939; amd. Sec. 3, Ch. 390, L. 1973; amd. Sec. 12, Ch. 13, L. 1977; R.C.M. 1947, 3-804; amd. Sec. 12, Ch. 373, L. 1987.

80-5-114 through 80-5-119 reserved.

80-5-120. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Advertisement" means a representation, other than a representation on the label, that is disseminated by any means and that relates to seed governed by the provisions of this chapter.

(2) (a) "Agricultural seeds" means the seeds of grass, forage, cereal, fiber crops, and any other kinds of seeds commonly recognized within this state as agricultural seeds. The term includes lawn seeds and mixtures of seeds.

(b) The term does not include seeds from plants of the genus Cannabis that contain more than 0.3% tetrahydrocannabinol.

(3) "Approximate percentage" and "approximate number" mean the percentage or number with the variations above and below that value as allowed according to the tolerance limits defined in the rules for seed testing adopted by the association of official seed analysts.

(4) "Bulk" means not packaged in separate units.

(5) "Certifying agency" means:

(a) an agency authorized under the laws of a state, territory, or possession of the United States to officially certify seed and that has standards and procedures to ensure the genetic purity and identity of the seed certified; or

(b) an agency of a foreign country determined by the department to adhere to procedures and standards for seed certification that are comparable to those adhered to generally by the seed certifying agencies described in subsection (5)(a).

(6) "Conditioning" means drying, cleaning, scarifying, and other operations that could change the purity or germination of a seed and require the seed lot to be retested to determine labeling.

(7) "Controlling the pollination" means to use a method of hybridization that will produce pure seed that is at least 75% hybrid seed.

(8) "Dormant" means viable seeds, excluding hard seeds, that fail to germinate when provided the specified germination conditions for the seed in question.

(9) "Flower seeds" means seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts and that are commonly known and sold under the name of flower seeds in this state.

(10) "Genuine grower declaration" means a statement signed by the grower that indicates, for each lot of seed, the lot number, kind, variety, origin, weight, year of production, date, and destination of shipment.

(11) "Germination" means the emergence and development from the seed embryo as evidence of vitality when the seeds are subjected to the proper moisture and temperature conditions with proper aeration for the customary length of time for each specific kind of seed, as specified in the rules for seed testing adopted by the association of official seed analysts.

(12) "Hard seeds" means seeds that remain hard at the end of the prescribed test period because they have not absorbed water because of an impermeable seed coat.

(13) "Hybrid", as the term applies to varieties of seed, means the first generation seed of a cross produced by controlling the pollination and by combining:

(a) two or more inbred lines;

(b) one inbred or a single cross with an open pollinated variety; or

(c) two or more selected clones, seed lines, varieties, or species except open-pollinated varieties of corn (Zea mays). The second generation of subsequent generations from those crosses may not be regarded as hybrids. Hybrid designations must be treated as variety names.

(14) "Indigenous seeds" means the seeds of those plants that are naturally adapted to an area where the intended use is for revegetation of disturbed sites. These plants include grasses, forbs, shrubs, and legumes.

(15) "Inert matter" means all matter that is not seed, including broken seeds, sterile florets, chaff, fungus bodies, and stones as determined by methods defined by the association of official seed analysts.

(16) "Kind" means one or more related species or subspecies that are known singly or collectively by one common name, such as corn, oats, alfalfa, and timothy.

(17) "Labeling" means a tag or other device, attached to or written, stamped, or printed on a container or accompanying a lot of bulk seeds, that purports to set forth the information required on the seed label under 80-5-123 and that may include any other information relating to the labeled seed.

(18) "Lot" means a definite quantity of seed identified by a lot number or other mark, every portion of which is uniform within recognized tolerances for the factors that appear in the labeling.

(19) "Mixture" means seed consisting of more than one kind, each in excess of 5% by weight of the whole.

(20) "Montana certified seed grower" means a member of an authorized Montana seed certifying agency who has consented to produce seed under the rules for certified classes of seed, with respect to the maintenance of genetic purity and variety identity, set forth by the establishing agency.

(21) "Other crop seeds" means any agricultural, vegetable, or flower seeds other than the kind or variety of seed or the mixture of seeds included as pure seed.

(22) "Person" means an individual, firm, partnership, corporation, or association.

(23) "Prohibited noxious weed seeds" means the seeds of plant species that are designated as noxious weeds as defined in 7-22-2101.

(24) "Protected variety" means a variety for which a certificate has been issued by the United States plant variety protection office or for which an application for protection has been filed granting the owner or the owner's authorized agent exclusive rights in the sale and distribution of the variety.

(25) "Pure live seed" means the product of the percentage of germination plus hard seed or dormant seed multiplied by the percentage of pure seed, divided by 100, with the result expressed as a whole number.

(26) "Pure seed" means seed exclusive of inert matter and all other seeds not of the seed being considered, as determined by methods defined by the association of official seed analysts.

(27) "Restricted weed seeds" means the seeds of any plant that may adversely affect agriculture or the environment and that are designated as restricted weed seeds under rules adopted by the department.

(28) "Screening" means chaff, sterile florets, immature seed, weed seed, inert matter, and any other materials removed from seed by any kind of cleaning or conditioning.

(29) "Seed conditioning plant" means a place of business, whether a permanent or portable facility, that conditions seeds.

(30) "Seed dealer" means a person who sells seeds.

(31) "Seed labeler" means a person affixing labels to seeds, with that person's name, address, and other information as required in 80-5-123.

(32) "Sell" means to offer for sale, expose for sale, have in possession for sale, exchange, barter, or trade. The term includes furnishing agricultural seed to growers for the production of a crop on contract.

(33) "Stop sale" means an administrative order provided by law that restrains the sale, use, disposition, and movement of a definite amount of seed.

(34) "Treated" means that seed has received an application of a substance or has been subjected to a process for which a claim is made.

(35) "Type" means a group of varieties so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions.

(36) "Variety" means a subdivision of a kind that is:

(a) distinct, in the sense that the variety can be differentiated by one or more identifiable morphological, physiological, or other characteristics from all other varieties known publicly;

(b) uniform, in the sense that the variations in essential and distinctive characteristics are describable; and

(c) stable, in the sense that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity when reproduced or reconstituted as required by the different categories of varieties.

(37) "Vegetable seeds" means seeds of those crops that are or may be grown in gardens or on truck farms and are or may be sold generally under the name of vegetable seeds or herbs.

(38) "Viable" means that seeds are capable of producing a normal seedling under optimum growing conditions after all forms of dormancy have been overcome, if present.

(39) "Weed seeds" means the seeds of all plants generally recognized as weeds within this state and includes noxious weed seeds.

History: En. Sec. 1, Ch. 373, L. 1987; amd. Sec. 3, Ch. 345, L. 1999; amd. Sec. 19, Ch. 407, L. 2001; amd. Sec. 2, Ch. 420, L. 2017; amd. Sec. 5, Ch. 92, L. 2019.

80-5-121. Renumbered 80-5-133. Code Commissioner, 1999.

80-5-122. Renumbered 80-5-138. Code Commissioner, 1999.

80-5-123. Label requirements for agricultural, vegetable, flower, and indigenous seeds. (1) Each container of agricultural, vegetable, flower, and indigenous seeds sold in this state for sowing purposes must bear a conspicuous, unaltered label or tag, plainly written or printed in English. Bulk sales must be accompanied by the required label information, which must be given to the seed purchaser. The following information, which may not be modified or denied in the labeling or on another label attached to the container, must be included on a label:

(a) name and address of the seed labeler;

(b) lot number identification;

(c) germination rate and date of germination test or a notation of the year for which the seed was packaged for sale;

(d) state or country of origin;

(e) notice calling attention to the requirement for alternative dispute resolution under 80-5-501; and

(f) seed kind or variety. The department shall establish rules specifying the kinds of seed for which variety must be stated and the kinds of seeds for which the variety may be stated and when the words "variety not stated" may be used. Kinds of seeds not listed by department rule may be stated as kind only or as kind and variety.

(2) In addition to the required label information listed in subsection (1), the department shall establish by rule additional label requirements for agricultural seed, including grass, lawn, and turf seed, and for vegetable, flower, and indigenous seeds. The additional label requirements may include:

(a) percentage of kind or variety of each seed component present in a container;

(b) percentage of weed seed present, both restricted and common weed seed;

(c) amount of inert material present;

(d) warnings for treated seed; and

(e) requirements for coated seed, inoculated seed, seed that is below standard, seed sold in bulk, hybrid seed, seed mixtures, and seed in containers, mats, tapes, and other planting devices.

History: En. Sec. 11, Ch. 345, L. 1999; amd. Sec. 12, Ch. 567, L. 2001.

80-5-124. Exemptions. (1) The labeling requirements in 80-5-123 and the prohibitions in 80-5-134 do not apply to:

(a) seed or grain that is not intended for sowing purposes;

(b) seed in storage in or being transported or consigned to a cleaning or processing establishment for cleaning or processing if:

(i) the invoice or labeling accompanying that seed bears the statement "seeds for processing"; and

(ii) any labeling or representation made with respect to the uncleaned or unprocessed seed is subject to this chapter; and

(c) a carrier in respect to seed transported or delivered for transportation in the ordinary course of its business as a carrier, as long as the carrier is not engaged in producing, processing, or marketing seed that is subject to the provisions of this chapter.

(2) A person is not subject to the penalties in 80-5-136 for selling or offering for sale seeds subject to the provisions of this chapter that were incorrectly labeled or represented as to kind, species and subspecies (if appropriate), variety, type, origin, elevation, or year of collection (if required) when the seed cannot be identified by examination, unless the person has failed to obtain an invoice, genuine grower declaration, or other labeling information and has failed to take reasonable precautions to ensure the identity of the seeds. A genuine grower declaration

of variety is considered an affirmation that the grower holds records of proof regarding parent seed, such as invoices and labels.

History: En. Sec. 14, Ch. 345, L. 1999.

80-5-125. Exchange of seed between labelers. (1) When seed is exchanged or transferred from one seed labeler to another, it shall be accompanied by a shipping document which clearly shows the kind(s) of seed and quantity of each kind. Each container of seed in a lot shall carry a lot number designation.

(2) While seed is in the possession of a licensed seed labeler, it must carry a lot number on each container at all times. When seed is made available for sale or sold, a complete label must be attached to each container of a lot.

History: En. Sec. 2, Ch. 361, L. 1969; amd. Sec. 2, Ch. 390, L. 1973; amd. Sec. 10, Ch. 13, L. 1977; R.C.M. 1947, 3-802.2(2); amd. Sec. 3, Ch. 373, L. 1987; Sec. 80-5-103, MCA 1997; redes. 80-5-125 by Code Commissioner, 1999.

80-5-126. Analysis by seed laboratory — reports. The seed laboratory of the agricultural experiment station shall analyze and test seeds sold or offered or exposed for sale in this state at a time and place and to the extent the director of the agricultural experiment station determines. The laboratory shall report to the department all violations as they appear. It may also annually before September 1 make a report to the department of all tests made and the results, which may be published by the department.

History: En. Sec. 5, Ch. 12, L. 1913; re-en. Sec. 3597, R.C.M. 1921; re-en. Sec. 3597, R.C.M. 1935; amd. Sec. 6, Ch. 88, L. 1939; amd. Sec. 3, Ch. 155, L. 1951; amd. Sec. 42, Ch. 218, L. 1974; amd. Sec. 13, Ch. 13, L. 1977; R.C.M. 1947, 3-805(1); amd. Sec. 7, Ch. 373, L. 1987; Sec. 80-5-108, MCA 1997; redes. 80-5-126 by Code Commissioner, 1999; amd. Sec. 3, Ch. 300, L. 2011.

Cross-References

Rules for enforcement of interstate embargo, including inspection provisions, 80-7-702.

80-5-127. Testing of submitted samples. The seed laboratory shall analyze any official seed samples taken from seed lots offered for sale in the state or submitted by the department, using methods such as those established under the Federal Seed Act and the procedural guidelines developed by the association of official seed analysts.

History: En. 3-806.1 by Sec. 4, Ch. 390, L. 1973; R.C.M. 1947, 3-806.1; amd. Sec. 8, Ch. 373, L. 1987; Sec. 80-5-109, MCA 1997; redes. 80-5-127 by Code Commissioner, 1999.

80-5-128. Laboratory testing of samples — fees. (1) Any citizen of this state may request that the seed laboratory examine, analyze, or test samples of seed upon payment of the fee and compliance with procedures governing the submission of seed samples for that service.

(2) Samples of seed analyzed and tested must be charged for at rates established by the seed laboratory as provided in 20-25-229.

(3) All fees collected by the seed laboratory must be used to defray the expenses incurred by the laboratory under this chapter and the expenses incurred by the seed laboratory advisory board provided for in 2-15-1525.

History: En. Sec. 7, Ch. 12, L. 1913; re-en. Sec. 3599, R.C.M. 1921; re-en. Sec. 3599, R.C.M. 1935; amd. Sec. 2, Ch. 192, L. 1937; amd. Sec. 8, Ch. 88, L. 1939; amd. Sec. 1, Ch. 85, L. 1949; amd. Sec. 4, Ch. 155, L. 1951; amd. Sec. 5, Ch. 390, L. 1973; amd. Sec. 14, Ch. 13, L. 1977; R.C.M. 1947, 3-807; amd. Sec. 9, Ch. 373, L. 1987; amd. Sec. 2, Ch. 345, L. 1999; Sec. 80-5-110, MCA 1997; redes. 80-5-128 by Code Commissioner, 1999; amd. Sec. 4, Ch. 300, L. 2011.

80-5-129. Certificate of test presumptive evidence. The certificate of the seed laboratory, giving results of any examinations, analyses, or tests of any seed samples made under the authority of the department, is presumptive evidence of the correctness of the facts stated in it.

History: En. Sec. 8, Ch. 12, L. 1913; re-en. Sec. 3600, R.C.M. 1921; re-en. Sec. 3600, R.C.M. 1935; amd. Sec. 9, Ch. 88, L. 1939; amd. Sec. 6, Ch. 390, L. 1973; R.C.M. 1947, 3-808; amd. Sec. 10, Ch. 373, L. 1987; Sec. 80-5-111, MCA 1997; redes. 80-5-129 by Code Commissioner, 1999.

80-5-130. Licensing — application — fee. (1) All facilities located in the state that condition agricultural seed shall obtain a license from the department for each facility. However, a seed grower, when conditioning only seed from that grower's own production, is not required to be licensed under this part.

(2) Each seed conditioning plant shall post in a conspicuous location in the facility:

(a) its fees for conditioning services; and

(b) the license for the facility.

(3) A person whose name and address appear on the label of agricultural seed sold in Montana, as required by 80-5-123, shall obtain a seed labeler's license from the department before doing business in Montana. The following persons, however, are excluded from the licensing requirements under this subsection:

(a) a Montana certified seed grower when labeling certified seed from that grower's own production;

(b) any person who updates germination test data by affixing to the package of seed a supplemental label bearing new germination data, the lot number, and the person's name and address; or

(c) a Montana grower who labels seed only of that labeler's own production with a gross annual sales value of $5,000 or less.

(4) A person who sells agricultural seed in Montana shall obtain a seed dealer's license from the department for each place where seed is located or sold, except for:

(a) a person who sells seed only in sealed packages of 10 pounds or less;

(b) a person who sells seed that has a gross sales value of $1,000 or less a year;

(c) a person who sells seed only to a Montana-licensed seed dealer, labeler, or conditioner; or

(d) a Montana grower selling only seed of that grower's own production with a gross annual sales value of $5,000 or less.

(5) (a) The department may by rule adjust a license fee to maintain adequate funding for the administration of this part.

(b) The license fee may not be less than $50 a year or more than $200 a year for a person who is a Montana resident and who:

(i) sells, labels, or sells and labels seed;

(ii) is a seed dealer;

(iii) operates a seed conditioning plant; or

(iv) is a seed labeler.

(c) The license fee for a person who is a nonresident and who is:

(i) a seed dealer may not be less than $100 or more than $250 a year; or

(ii) a seed labeler may not be less than $50 or more than $200 a year.

(6) An application for a license under this section must be made in a manner and on forms provided by the department. The application must contain:

(a) the location of each seed conditioning plant if the application is for a seed conditioning plant license;

(b) a sample label if the application is for a seed labeler license; and

(c) a list of persons selling seed if required by department rule.

(7) Seed dealers shall provide with all shipments of agricultural seed a bill of lading or other evidence of delivery that includes:

(a) the names of:

(i) the seed dealer;

(ii) the shipper, if other than the seed dealer;

(iii) the buyer; and

(iv) the receiver, if other than the buyer; and

(b) the destination where the seed will be first unloaded.

History: En. Sec. 2, Ch. 442, L. 1973; amd. Sec. 2, Ch. 315, L. 1977; R.C.M. 1947, 3-311; amd. Sec. 7, Ch. 20, L. 1979; amd. Sec. 7, Ch. 464, L. 1983; amd. Sec. 73, Ch. 539, L. 1983; amd. Sec. 13, Ch. 373, L. 1987; amd. Sec. 2, Ch. 446, L. 1989; amd. Sec. 5, Ch. 345, L. 1999; Sec. 80-5-202, MCA 1997; redes. 80-5-130 by Code Commissioner, 1999; amd. Sec. 1, Ch. 263, L. 2003; amd. Sec. 1, Ch. 122, L. 2021.

80-5-131. Assessment on sales into Montana — reporting — rulemaking. (1) Except as provided in this subsection, seed labelers located outside Montana who sell agricultural seed in Montana shall report those sales and pay a fee of 20 cents per $100 in gross annual sales of agricultural seed. The department may by rule adjust the assessment fee to maintain adequate funding for the administration of this part. The assessment fee may not be less than 20 cents per $100 or more than 30 cents per $100 in gross annual sales of agricultural seed. Fees must be paid only if they total more than $5 in a reporting period.

(2) The department shall by rule establish:

(a) reporting requirements, including persons who shall report, the form of reports, the reporting period, and the scope of information to be reported;

(b) the due date applicable to reports; and

(c) penalty provisions applicable to reports that are not received by the due date, not to exceed $25 or 10% of the assessment due, whichever is greater.

(3) Failure to submit the report as required or to pay the assessment in full constitutes a violation subject to the penalty provisions of this chapter.

History: En. Sec. 13, Ch. 345, L. 1999; amd. Sec. 2, Ch. 263, L. 2003; amd. Sec. 2, Ch. 339, L. 2017.

80-5-132. Deposit of funds — seed account. (1) There is an account in the state special revenue fund to be known as the seed account. All inspection, license, assessment, filing, and penalty fee revenue collected under this chapter must be deposited in the seed account. Funds received from any source, such as gifts, grants, cost-share funds, and other funds designated for purposes consistent with this chapter, may also be deposited in the seed account.

(2) Money received as revenue under this chapter not immediately required for the purposes of this chapter must be invested under the provisions of the unified investment program established in Title 17, chapter 6, part 2. All interest earned on the seed account must be deposited in the seed account.

History: En. Sec. 8, Ch. 442, L. 1973; R.C.M. 1947, 3-317; amd. Sec. 2, Ch. 602, L. 1993; amd. Sec. 8, Ch. 345, L. 1999; Sec. 80-5-208, MCA 1997; redes 80-5-132 by Code Commissioner, 1999.

Cross-References

State treasury fund structure, 17-2-102.

80-5-133. Inspection. Consistent with the responsibilities of this chapter, authorized representatives of the department, upon presentation of department-issued credentials, may enter, at reasonable times or under emergency conditions, any public or private premises, including any vehicle of transport. The department may inspect or investigate, obtain samples, examine seeds and labels, inspect equipment, and review and copy records relating to distribution of seed or licensing requirements in Montana. Upon request, the department shall pay the current market value for each seed sample.

History: En. Sec. 17, Ch. 373, L. 1987; amd. Sec. 4, Ch. 345, L. 1999; Sec. 80-5-121, MCA 1997; redes. 80-5-133 by Code Commissioner, 1999.

80-5-134. Prohibitions. (1) A person may not sell or transport for use in planting in this state any seed that:

(a) contains prohibited noxious weed seeds;

(b) contains restricted weed seeds in excess of the maximum numbers per pound allowed under rules adopted by the department;

(c) contains in excess of 2% or more of weed seed;

(d) is offered or exposed for sale more than 12 calendar months from the last day of the month in which the germination test was completed. This 12-month limitation does not apply when seed is packaged in hermetically sealed containers within 12 months after harvest. The container must be conspicuously labeled in not less than 8-point type to indicate that:

(i) the container is hermetically sealed;

(ii) the seed has been preconditioned as to moisture content; and

(iii) the germination test is valid for a period not to exceed 18 months from the date of the germination test for seeds offered for sale on a wholesale basis and for a period not to exceed 36 months for seeds offered for sale at retail.

(e) is labeled, advertised, or otherwise represented as being certified seed of any class unless:

(i) it has been determined by a seed certifying agency that the seed conforms to standards of purity and identity as to kind, species (and subspecies, if appropriate), or variety; and

(ii) the seed bears an official label issued for that seed by a seed certifying agency certifying that the seed is of a specified class and a specified kind, species (and subspecies, if appropriate), or variety;

(f) is a variety for which a United States certificate of plant variety protection has been issued or applied for under the provisions of the Plant Variety Protection Act, 7 U.S.C. 2321, et seq., without the authority of the owner of the variety or is labeled with a variety name but

not certified by an official seed certifying agency when it is a variety for which the certificate or application for "protection" specifies sale only as a class of certified seed, provided that seed from a certified lot may be labeled as to variety name when used in a mixture;

(g) is not labeled in accordance with the provisions of this chapter and appurtenant rules or that has false or misleading labeling;

(h) has been falsely or misleadingly advertised.

(2) It is unlawful for a person within this state to:

(a) detach, alter, deface, or destroy any label provided for in this chapter or by rules promulgated pursuant to this chapter or to alter or substitute seed in a manner that may defeat the purposes of this chapter;

(b) disseminate any false or misleading advertisement concerning seed subject to the provisions of this chapter in any manner or by any means;

(c) hinder or obstruct, in any way, any authorized person in the performance of duties authorized under this chapter;

(d) fail or refuse to obtain a license when required pursuant to 80-5-130;

(e) fail to comply with a stop sale order or to move or otherwise handle or dispose of any lot of seed held under a stop sale order except with permission of the department and for the purpose specified in the stop sale order;

(f) fail to comply with any provisions of this part, including rules promulgated under this part;

(g) use the word "trace" as a substitute for any required statement;

(h) use the word "type" in any labeling in connection with the name of any agricultural seed variety; or

(i) provide seed cleaning and conditioning services without obtaining a properly completed genuine grower declaration form as specified by the department.

History: En. Sec. 4, Ch. 361, L. 1969; amd. Sec. 12, Ch. 390, L. 1973; Sec. 3-820, R.C.M. 1947; amd. and redes. 3-802.4 by Sec. 45, Ch. 218, L. 1974; amd. Sec. 11, Ch. 13, L. 1977; amd. Sec. 5, Ch. 315, L. 1977; R.C.M. 1947, 3-802.4; amd. Sec. 5, Ch. 373, L. 1987; amd. Sec. 1, Ch. 345, L. 1999; Sec. 80-5-105, MCA 1997; redes. 80-5-134 by Code Commissioner, 1999; amd. Sec. 1, Ch. 630, L. 2023.

80-5-135. Screenings — restrictions on movements. All screenings, whether from seed conditioning plants or other sources, represent both a valuable and potentially hazardous product. Their movements are restricted as follows:

(1) The viability of prohibited noxious weed seed as defined in 80-5-120 shall be destroyed before screenings are utilized in feed or in any other way in which they may propagate their kind. However, if these screenings are sold for feed, it shall be the responsibility of the feed buyer to haul under a tarp cover or other tight container until the provisions of this part are met.

(2) The department may adopt rules to restrict or exempt from restriction the holding and movement of screenings when the public interest is served by so doing.

History: En. Sec. 3, Ch. 442, L. 1973; R.C.M. 1947, 3-312; amd. Sec. 9, Ch. 464, L. 1983; amd. Sec. 14, Ch. 373, L. 1987; Sec. 80-5-204, MCA 1997; redes. 80-5-135 by Code Commissioner, 1999.

80-5-136. Administration — stop sale order — violation — cancellation of license — enforcement. (1) The department shall administer and enforce the provisions of this part and the rules promulgated under this part.

(2) The department may issue and enforce a written or printed stop sale order to the owner or custodian of any lot of seed that the department finds to be in violation of this chapter. The order shall prohibit further sale or movement of the seed until the department has evidence that this chapter has been complied with. Upon proper correction by reconditioning, labeling, or otherwise and when in the judgment of the department the requirements of this chapter have been met, the stop sale order must be lifted and the seed may be sold. If a violation cannot be corrected after adequate opportunity has been provided, the department may order the destruction of any lot of seed remaining in violation. An order for the destruction of a lot of seed is subject to the contested case provisions of Title 2, chapter 4, part 6.

(3) Distribution of seeds that are not legally labeled or failure to comply with this chapter or rules issued under its authority constitutes sufficient grounds for the department to cancel or deny a license to a licensee, provided that the licensee is given a reasonable opportunity to correct inadvertent and nonrecurring deficiencies.

(4) A person who violates or aids in the violation of any provision of this chapter or rules adopted under this chapter is subject to one or both of the following penalties:

(a) an administrative civil penalty of not more than $1,000 for each offense. Assessment of a penalty under this subsection (4)(a) may be made in conjunction with any other warning, order, or administrative action by the department under the authority of this part.

(b) a misdemeanor punishable by a fine of not less than $100 or more than $300 plus costs of prosecution for the first violation and not less than $500 or more than $1,000 plus costs of prosecution for each subsequent violation.

(5) The department shall establish by rule a penalty matrix that schedules the types of penalties, the amounts for initial and subsequent offenses, and any other matters necessary for the administration of civil penalties under subsection (4)(a). The issuance of a civil penalty is subject to the contested case procedures of Title 2, chapter 4, part 6.

(6) Nothing in this part may be construed as requiring the department or its representatives to report violations of this part when it believes that the public interest will be best served by a suitable notice of warning.

(7) It is the duty of each county attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

(8) The department is authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this part or any rule promulgated under this part notwithstanding the existence of other remedies at law. An injunction is issued without bond.

(9) Any person adversely affected by an act, order, or ruling made pursuant to the provisions of this part may within 30 days bring action in the district court of the county or any county where the alleged violation occurred for trial of the issues bearing upon the act.

(10) (a) Except as otherwise provided in this chapter, a political subdivision may not regulate by adopting or continuing in effect any local legislation or regulation relating to the cultivation, harvesting, production, processing, sale, storage, transportation, distribution, possession, use, and planting of agricultural seeds or vegetable seeds.

(b) Local legislation adopted or continued in violation of this section is void and unenforceable.

History: En. Sec. 7, Ch. 442, L. 1973; amd. Sec. 4, Ch. 315, L. 1977; R.C.M. 1947, 3-316; amd. Sec. 16, Ch. 373, L. 1987; amd. Sec. 1, Ch. 602, L. 1993; amd. Sec. 7, Ch. 345, L. 1999; Sec. 80-5-207, MCA 1997; redes. 80-5-136 by Code Commissioner, 1999; amd. Sec. 3, Ch. 420, L. 2017.

80-5-137. Cooperation and agreements. The department may cooperate with and enter into agreements with other governmental agencies, universities, and private entities to carry out the provisions of this part.

History: En. Sec. 12, Ch. 345, L. 1999.

80-5-138. Publication of reports. The department may publish the names and addresses of persons licensed under this chapter.

History: En. Sec. 18, Ch. 373, L. 1987; Sec. 80-5-122, MCA 1997; redes. 80-5-138 by Code Commissioner, 1999.

80-5-139. Rules — promulgated by department. (1) The department is authorized to promulgate necessary rules as authorized by this part. All rules are to be promulgated in accordance with procedures as set forth in the Montana Administrative Procedure Act.

(2) Rules may address but are not limited to the following subjects:

(a) designation of kinds of seed as agricultural, vegetable, flower, or indigenous;

(b) designation of kinds of seed that must be labeled as to variety name;

(c) designation of kinds and varieties of flower seeds that may be labeled according to type and performance characteristics;

(d) standards for determining and stating pure live seed, germination, or viability;

(e) plants to be designated as weeds, restricted weeds, and prohibited weeds and standards for allowing weeds and restricted weeds in seeds;

(f) procedures for implementing the administrative provisions of 80-5-136;

(g) procedures for implementing and administering civil penalties, including establishing a penalty matrix that schedules the types of penalties, the amounts for initial and subsequent

offenses, and any other matters necessary for the administration of civil penalties under 80-5-136;

(h) procedures for submitting applications for licensing and establishing the period for which licenses are issued under 80-5-130;

(i) minimum standards for equipment and handling procedures for facilities that require licensing, including sellers and distributors of agricultural seed, seed labelers, and conditioning plants;

(j) standards that restrict or exempt from restriction the holding and movement of screenings, when in the public interest; and

(k) recordkeeping requirements for persons who handle agricultural, vegetable, flower, or indigenous seeds, including file samples of seed for each lot handled for a period of time up to 2 years.

History: En. Sec. 6, Ch. 442, L. 1973; R.C.M. 1947, 3-315; amd. Sec. 8, Ch. 20, L. 1979; amd. Sec. 6, Ch. 345, L. 1999; Sec. 80-5-206, MCA 1997; redes. 80-5-139 by Code Commissioner, 1999; amd. Sec. 5, Ch. 300, L. 2011.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

Department defined, 80-1-101.

80-5-140. Application of sections. A person, firm, association, or corporation that issues, uses, or circulates any certificate, advertisement, tag, seal, poster, letterhead, marking, circular, or written or printed representation or description pertaining to seeds or plant parts intended for propagation or sale or sold or offered for sale in which the words "Montana state certified", "state certified", "Montana certified", or "one year off certified" or similar words or phrases are used or employed is subject to 80-5-140 through 80-5-144.

History: En. Sec. 1, Ch. 11, L. 1951; amd. Sec. 43, Ch. 218, L. 1974; R.C.M. 1947, 3-809; amd. Sec. 9, Ch. 345, L. 1999; Sec. 80-5-301, MCA 1997; redes. 80-5-140 by Code Commissioner, 1999.

80-5-141. Rules by Montana state university-Bozeman — certification agencies. Every person, firm, association, or corporation subject to the provisions of 80-5-140 through 80-5-144 shall observe, perform, or comply with all rules and standards for seed certification established or specified by Montana state university-Bozeman, hereafter referred to as the university, as to what crops grown or to be grown in Montana shall be eligible for certification hereunder, as to the conduct of such certification, either by said university directly or by agents or agencies authorized by it for the purpose, and as to standards, requirements, and forms of and for certification hereunder; provided, however, that not more than one such agent or agency for certification shall be designated for any one specified crop. No certification within the provisions of 80-5-140 through 80-5-144 shall be made or authorized except by or through said university.

History: En. Sec. 2, Ch. 11, L. 1951; amd. Sec. 7, Ch. 390, L. 1973; R.C.M. 1947, 3-810; amd. sec. 36, Ch. 308, L. 1995; Sec. 80-5-302, MCA 1997; redes. 80-5-141 by Code Commissioner, 1999.

80-5-142. Certification work on self-supporting basis. Certification work, whether conducted by said university or by an agency designated by it, shall be on a self-supporting basis and not for financial profit.

History: En. Sec. 3, Ch. 11, L. 1951; amd. Sec. 8, Ch. 390, L. 1973; R.C.M. 1947, 3-811; Sec. 80-5-303, MCA 1997; redes. 80-5-142 by Code Commissioner, 1999.

80-5-143. Withholding certification. The said university or its designated agency or agencies may withhold certification from any grower of seeds or plant parts who is engaged in or attempting to engage in any dishonest practices for the purpose of evading the provisions of 80-5-140 through 80-5-144, including standards and rules laid down by the said university or its designated agency or agencies to cover certification.

History: En. Sec. 5, Ch. 11, L. 1951; amd. Sec. 10, Ch. 390, L. 1973; R.C.M. 1947, 3-813; Sec. 80-5-304, MCA 1997; redes. 80-5-143 by Code Commissioner, 1999.

80-5-144. Unlawful use of certification — penalty. A person, firm, association, or corporation may not issue, make, use, or circulate any document purporting to be or represented as a seed or plant part certification certificate, represent seeds or plant parts as certified, or use the term "Montana state certified", "state certified", "Montana certified", or "one year off certified" or similar words or phrases, without the authority and approval of the university. A person, firm, association, or corporation who violates 80-5-140 through 80-5-144 is guilty of a misdemeanor and shall be fined not less than $100 or more than $500 for each offense.

History: En. Sec. 6, Ch. 11, L. 1951; amd. Sec. 11, Ch. 390, L. 1973; amd. Sec. 44, Ch. 218, L. 1974; R.C.M. 1947, 3-814; amd. Sec. 10, Ch. 345, L. 1999; Sec. 80-5-305, MCA 1997; redes 80-5-144 by Code Commissioner, 1999.

Part 2
Licensing
(Renumbered and Repealed)

80-5-201. Repealed. Sec. 19, Ch. 373, L. 1987.

History: En. Sec. 1, Ch. 442, L. 1973; amd. Sec. 1, Ch. 315, L. 1977; R.C.M. 1947, 3-310(2) thru (12); amd. Sec. 6, Ch. 464, L. 1983; amd. Sec. 72, Ch. 539, L. 1983.

80-5-202. Renumbered 80-5-130. Code Commissioner, 1999.

80-5-203. Repealed. Sec. 19, Ch. 373, L. 1987.

History: En. Sec. 4, Ch. 442, L. 1973; amd. Sec. 3, Ch. 315, L. 1977; R.C.M. 1947, 3-313; amd. Sec. 8, Ch. 464, L. 1983; amd. Sec. 74, Ch. 539, L. 1983.

80-5-204. Renumbered 80-5-135. Code Commissioner, 1999.

80-5-205. Repealed. Sec. 16, Ch. 345, L. 1999.

History: En. Sec. 5, Ch. 442, L. 1973; R.C.M. 1947, 3-314; amd. Sec. 15, Ch. 373, L. 1987.

80-5-206. Renumbered 80-5-139. Code Commissioner, 1999.

80-5-207. Renumbered 80-5-136. Code Commissioner, 1999.

80-5-208. Renumbered 80-5-132. Code Commissioner, 1999.

Part 3
Certification
(Renumbered)

80-5-301. Renumbered 80-5-140. Code Commissioner, 1999.

80-5-302. Renumbered 80-5-141. Code Commissioner, 1999.

80-5-303. Renumbered 80-5-142. Code Commissioner, 1999.

80-5-304. Renumbered 80-5-143. Code Commissioner, 1999.

80-5-305. Renumbered 80-5-144. Code Commissioner, 1999.

Part 4
Seed Potato Disease Control Act

80-5-401. Short title. This part may be cited as the "Seed Potato Disease Control Act".

History: En. Sec. 1, Ch. 610, L. 1989.

80-5-402. Definitions. As used in this part, the following definitions apply:

(1) "Certified seed potatoes" means potato seed stock that has passed limited field and storage inspections and that has been grown in accordance with the certification rules and regulations of an official seed potato certifying agency of the state or country of origin and certified as such.

(2) "Commercial purpose" means planting or propagating potatoes for the purpose of selling, trading, or otherwise exchanging for profit.

(3) "Department" means the department of agriculture provided for in 2-15-3001.

(4) "Person" means an individual, firm, partnership, corporation, company, association, or separate business or legal entity.

(5) "Seed potatoes" or "potato seed" means all varieties of potato tubers, stems, and other plant parts of the herb plant known as Solanum tuberosum that are intended or used for seed purposes, planting, propagation, or reproduction.

History: En. Sec. 2, Ch. 610, L. 1989; amd. Sec. 1, Ch. 59, L. 1997.

80-5-403. Imported seed potatoes — restrictions — exceptions. (1) To control and prevent the spread of contagious diseases among seed potato stock, seed potatoes may not be imported into this state for any commercial purpose unless the seed potatoes are:

(a) from seed stock produced as a part of a certified seed potato crop in the state or country of origin and certified as being from that stock;

(b) subject to inspection at the Montana receiving point by a federal or state-federal standard grade inspector;

(c) shipped in a clean, disinfected container or transportation carrier; and

(d) accompanied by a United States department of agriculture or state of origin certification of inspection describing the seed variety, seed class, standard grade, quality or condition, and seed source and have affixed to each inspection certificate an official state of origin seed potato certification tag or label.

(2) The provisions of subsection (1) do not apply to any unit of the Montana university system when it is importing into this state potato seed for research or educational purposes.

(3) Seed or commercial potatoes, equipment, machinery, bags, or containers known to be diseased or contaminated with bacterial ring rot, golden nematode, or other diseases designated by department rule may not be brought into this state.

History: En. Sec. 3, Ch. 610, L. 1989; amd. Sec. 2, Ch. 59, L. 1997.

80-5-404. Planting noncertified seed potatoes prohibited — exceptions. (1) To control and prevent the spread of contagious diseases and viruses among seed potato stock, it is unlawful for any person to plant or produce potatoes, either seed or commercial, from any seed potato stock unless the seed potatoes are:

(a) from seed stock produced as a part of a certified seed potato crop in the state or country of origin and certified as being from that stock;

(b) subject to inspection at the receiving point by a federal or state-federal standard grade inspector if from a source outside the county;

(c) shipped in a clean, disinfected container or transportation carrier; and

(d) for each individual lot of seed potatoes, accompanied by a United States department of agriculture or state of origin certificate of inspection describing the seed variety, seed class, standard grade, quality or condition, and seed source and have affixed to each inspection certificate an official state of origin seed potato certification tag or label.

(2) The provisions of this section do not apply to:

(a) potatoes grown in home gardens;

(b) potatoes grown by any unit of the Montana university system for research or educational purposes.

History: En. Sec. 4, Ch. 610, L. 1989; amd. sec. 36, Ch. 308, L. 1995; amd. Sec. 3, Ch. 59, L. 1997.

80-5-405. Enforcement — penalty. (1) The department shall administer and enforce the provisions of this part.

(2) When potatoes are found to be in violation of this part, the department may issue orders:

(a) restricting transportation of the potatoes;

(b) requiring treatment or destruction of the potatoes; or

(c) requiring other disease prevention or suppression measures.

(3) The department may adopt rules governing quarantines to prevent the intrastate or interstate movement of diseases of potatoes from infested areas and adjacent areas. Quarantines may restrict or prohibit the transportation of plants, seed potatoes, machinery, equipment, soil, or other material capable of transporting the disease in any stage of development.

(4) A person violating any provision of this part is guilty of a misdemeanor and upon conviction shall be punished as provided in 46-18-212.

History: En. Sec. 5, Ch. 610, L. 1989; amd. Sec. 4, Ch. 59, L. 1997.

Part 5
Agricultural Seed Contract Alternative Dispute Resolution

80-5-501. Requirement and effect of alternative dispute resolution — exemption. (1) As a prerequisite to a buyer's rights to maintain legal action against a dealer or any other seller of agricultural seed for a claim as provided in subsection (2), the buyer shall submit the claim to alternative dispute resolution as provided in 80-5-506 and this section.

(2) A buyer may claim to have been damaged by the failure of agricultural seed to produce or perform:

(a) as represented by the label that is required to be attached pursuant to 80-5-123;

(b) as represented by the bulk certificate if the agricultural seed was purchased in bulk;

(c) by warranty; or

(d) as a result of negligence.

(3) Any applicable period of limitations with respect to the claim must be tolled until 10 days after the filing of the report of alternative dispute resolution with the director of the department as provided in 80-5-506.

(4) (a) A claim may not be asserted as a counterclaim or defense in any action brought by a seller against a buyer until the buyer has submitted a claim to alternative dispute resolution as provided in 80-5-506 and this section.

(b) When the buyer files a written notice of intention to assert a claim as a counterclaim or defense in the action and the notice is accompanied by a copy of the buyer's complaint in alternative dispute resolution filed under 80-5-506, the action must be stayed and any applicable statute of limitations must be suspended with respect to the claim asserted as a counterclaim or defense until 10 days after the filing of the report of alternative dispute resolution with the director of the department as provided in 80-5-506.

(5) To be eligible for resolution under the alternative dispute resolution process, a complaint must allege damages in excess of the amount established in 25-35-502 for jurisdiction in small claims court.

(6) This part does not apply to seed potatoes.

History: En. Sec. 1, Ch. 567, L. 2001.

80-5-502. Notice of alternative dispute resolution. A notice calling attention to the requirement for alternative dispute resolution under 80-5-501 must be included on the label required under 80-5-123, on the bulk certificate, or otherwise attached to or printed on the agricultural seed bag or package. Alternative dispute resolution may not be required unless this notice is included. A notice in the following form or equivalent language is sufficient:

NOTICE
ALTERNATIVE DISPUTE RESOLUTION REQUIRED BY STATE LAW

Under Montana agricultural seed laws, alternative dispute resolution is required as a prerequisite to maintaining a legal action based upon the failure of the agricultural seed to which this notice is attached to produce as represented. The consumer shall file a complaint along with the filing fee, when applicable, with the Director of the Department of Agriculture allowing sufficient time to permit inspection of the crops, plants, or trees by the designated agency and the seller from whom the agricultural seed was purchased. A copy of the complaint must be sent to the seller by certified mail or as otherwise provided by state law.

History: En. Sec. 2, Ch. 567, L. 2001.

Cross-References

Label requirements for agricultural, vegetable, flower, and indigenous seeds, 80-5-123.

80-5-503. Commencement of legal action — evidence. (1) The buyer or the seller may commence legal proceedings against the other party or assert a claim as a counterclaim or defense in an action brought by the seller or buyers after the receipt of the report of alternative dispute resolution as provided in 80-5-507.

(2) In litigation involving a complaint that has been subject to alternative dispute resolution under this part, a party may introduce the report of alternative dispute resolution as evidence of the facts found in the report. The court may give weight to the alternative dispute resolution council's findings and conclusions of law and recommendations regarding damages and costs. The court may also take into account any findings of the council with respect to the failure of a party to cooperate in the alternative dispute resolution proceedings, including findings regarding the effect that a delay in filing the alternative dispute resolution claim may have had upon the council's ability to determine the facts of the case.

History: En. Sec. 3, Ch. 567, L. 2001.

80-5-504. Alternative dispute resolution council. (1) The purpose of the alternative dispute resolution council is to conduct alternative dispute resolution, as provided in this part,

on an as-needed basis when an alternative dispute resolution complaint has been filed. The council must be called into session by the director of the department or the council presiding officer to consider matters referred to the council by the director or the presiding officer.

(2) The director shall appoint an alternative dispute resolution council, upon the receipt of an alternative dispute resolution complaint, composed of five members and five alternate members. Two of the five appointed members of the alternative dispute resolution council must be Montana production growers. One member and one alternate member must be appointed upon the recommendation of each of the following:

(a) vice provost and director, Montana state university extension service;

(b) director, Montana state university agricultural experiment station;

(c) president, Montana seed trade association;

(d) president, Montana seed growers association; and

(e) director, Montana department of agriculture.

(3) An alternate member may only serve in the absence of the member for whom the person is an alternate.

(4) The council shall elect a presiding officer and a secretary from its membership. The presiding officer conducts meetings and deliberations of the council and directs all of its activities. The secretary shall keep accurate records of all meetings and deliberations and perform other duties for the council as directed by the presiding officer.

History: En. Sec. 4, Ch. 567, L. 2001.

80-5-505. Authority of alternative dispute resolution council — compensation. (1) The alternative dispute resolution council or its members may:

(a) examine the buyer and the seller on all matters that the council considers relevant;

(b) grow a representative sample of the agricultural seed to production stage under the director's supervision through the facilities of the department or a designated university;

(c) hold informal hearings at the time and place directed by the council presiding officer, provided that reasonable notice was given to all parties; and

(d) delegate all or any part of an investigation to one or more of the council members.

(2) The members of the council may not receive compensation for the performance of their duties with respect to this part, except for reimbursement for travel expenses and per diem.

History: En. Sec. 5, Ch. 567, L. 2001.

80-5-506. Alternative dispute resolution procedure. (1) A buyer may institute alternative dispute resolution by filing a sworn complaint and a $250 filing fee with the director of the department. The buyer shall serve a copy of the complaint on the seller by certified mail or as otherwise provided in state law. Except in a case of agricultural seed that has not been planted, the claim must be filed allowing sufficient time to permit effective inspection of the plants under field conditions.

(2) Within 21 days after receipt of a copy of the complaint, the seller shall:

(a) file an answer to the complaint with the director;

(b) submit a $250 filing fee to the department; and

(c) serve a copy of the answer on the buyer by certified mail or as otherwise provided in state law.

(3) The director shall refer the complaint and answer to the alternative dispute resolution council for investigation, findings, and recommendations within 30 days of receiving the answer.

(4) When a complaint is referred to the council for investigation, the council shall make an investigation of the matters contained in the complaint and file a report of its findings and recommendations with the director within 60 days of receiving the referral, unless the parties subject to the alternative dispute resolution agree to a later date.

History: En. Sec. 6, Ch. 567, L. 2001.

80-5-507. Findings. (1) The report of the alternative dispute resolution council must:

(a) include findings of fact and recommendations regarding costs, if any; and

(b) consider the written summary provided when an investigation is delegated as provided in 80-5-505.

(2) The director shall send copies of the completed report to the buyer and seller by certified mail.

History: En. Sec. 7, Ch. 567, L. 2001.

80-5-508. Costs of alternative dispute resolution. Costs of alternative dispute resolution that exceed the amount paid in filing fees must be assessed to the nonprevailing party or equally distributed between the parties to the extent that the parties have agreed in writing to the equal distribution.

History: En. Sec. 8, Ch. 567, L. 2001.

80-5-509. Program administration and rulemaking. (1) The agricultural seed contract alternative dispute resolution program must be administered by the department.

(2) The department may adopt rules that are necessary for the efficient administration of this part. The rules may include but are not limited to:

(a) the content and format of the buyer's claim to alternative dispute resolution and the seller's answer;

(b) procedures for conducting investigations;

(c) a procedure for assessing costs of alternative dispute resolution to the parties; and

(d) types of seed that are exempted from the requirements of this part.

History: En. Sec. 9, Ch. 567, L. 2001.

80-5-510. Administration of fees. Filing fees and reimbursed costs must be deposited in the seed account established in 80-5-132 for the purpose of funding costs of investigation and alternative dispute resolution. Funds deposited under this section are to pay actual expenses incurred by the department to administer the alternative dispute resolution program provided for in this part.

History: En. Sec. 10, Ch. 567, L. 2001; amd. Sec. 12, Ch. 426, L. 2009.

Part 6
Patented Plant Material

80-5-601. Legislative findings — purpose. (1) The legislature finds that:

(a) the production of diverse agricultural crops is critical to the economic stability of Montana;

(b) Montana's agricultural companies and producers strive to operate their companies and grow their crops pursuant to generally accepted farming principles and practices;

(c) agricultural companies and producers in Montana are responsible for operating their businesses in a cooperative manner with their neighbors;

(d) the ability of Montana's growers to continue to compete in an expanding worldwide market is dependent upon access to a variety of crops that are resistant to diseases and pests;

(e) Montana's arid climate necessitates the development of types of crops that are drought-tolerant; and

(f) science has been a critical part of agriculture since its inception.

(2) The purpose of this part is to provide an orderly process to be followed when an intellectual property claim related to plants arises.

History: En. Sec. 1, Ch. 260, L. 2011.

80-5-602. Definitions. As used in this part, the following definitions apply:

(1) "Grower" means the person responsible for planting and managing a crop on land where infringement of an intellectual property right is suspected to have occurred.

(2) "Person" means an individual, firm, association, corporation, partnership, the state, a subdivision of the state, or any other form of business enterprise.

(3) "Protected plant" means any plant part or material, including but not limited to seeds and genetic traits, that is patented by the U.S. patent and trademark office or protected under the federal Plant Variety Protection Act, 7 U.S.C. 2321, et seq., or any other intellectual property protection recognized by federal law.

History: En. Sec. 2, Ch. 260, L. 2011.

80-5-603. Suspected violations — sampling procedures — confidentiality. (1) When an intellectual property owner or that person's agent makes a claim that a grower has planted, grown, or retained seed or any other plant part from a protected plant in violation of the intellectual property rights of another person, the claimant shall:

(a) request permission from the grower to enter the grower's land for the purpose of sampling;

(b) notify the grower that the grower may ask that the sampling be done by the department; and

(c) notify the department that a claim is being made.

(2) If the grower withholds permission to enter the grower's land or refuses to be present for sampling at a reasonable time and place, the claimant may petition a court for permission to enter the grower's land and 80-5-604(8) applies.

(3) (a) A court may grant an order allowing a claimant to enter the property if the court determines the sampling effort to be:

(i) minimally invasive;

(ii) minimally disruptive; and

(iii) reasonably based on information sufficient to support an inspection.

(b) The court may order the claimant to pay for any physical damages caused during the process of sampling.

(4) (a) When sampling is conducted, the grower and the claimant both have the right to be present if both the grower and the claimant have made a good faith effort to be present at a reasonable time and place.

(b) A department representative must be present during sampling if the department's presence is requested by either the grower or the claimant.

(c) The department may perform the sampling if asked to do so by the claimant or the grower. The department shall charge a fee that covers the costs of providing the sampling service. The fee may not exceed other seed-related sampling fees charged by the department.

(5) Costs associated with sampling must be paid by the claimant unless:

(a) both parties agree to a different assignment of costs through a contractual or settlement agreement; or

(b) a different allocation is ordered through mediation or court order.

(6) (a) The grower or the claimant may request that an independent laboratory confirm the presence of a protected plant in the samples taken. If the department took the sample, the department shall select an independent and qualified laboratory to conduct the requested laboratory services.

(b) Costs associated with the laboratory services must be paid by the entity making the request unless:

(i) both parties agree to a different assignment of costs through a contractual agreement or settlement agreement; or

(ii) a different allocation is directed through mediation or court order.

(7) The results of any sampling and laboratory services conducted pursuant to this section must be sent to the grower and the claimant by certified mail within 30 days.

(8) The results of all sampling and testing are confidential unless both the grower and the claimant agree to make them public.

History: En. Sec. 3, Ch. 260, L. 2011.

80-5-604. Mediation required before judicial action. (1) Except as provided in subsection (8), a claimant shall seek mediation before seeking judicial relief regarding a claim that a grower has planted, grown, or retained seed or any plant part from a protected plant in violation of the intellectual property rights of another person.

(2) The claimant shall notify the grower by certified mail and shall also advise the department of the intellectual property claim.

(3) (a) A mediator chosen pursuant to this section must:

(i) be selected and agreed upon by the claimant and the grower;

(ii) be an attorney; and

(iii) possess the necessary skills and qualifications to be a mediator.

(b) Preference must be given to attorneys with experience in intellectual property claims.

(4) (a) The department shall maintain a list of qualified mediators willing to perform mediation under this part. Both parties to an action may suggest names of a mediator as soon as the grower and the department are notified of the claim. The parties are not limited to using mediators from the department's list.

(b) The parties shall exercise good faith and diligence in selection of the mediator. If the parties exercise good faith and diligence and are unable to agree upon a mediator within 90 days of notice to the grower, either party may seek judicial relief.

(5) (a) The selected mediator shall schedule mediation to begin within 30 days at a location agreeable to both parties. The parties shall conclude mediation within 30 days of commencement of mediation unless the parties agree to a longer mediation period.

(b) The parties shall share equally in the costs of the mediator and mediation unless a different cost-sharing arrangement is agreed to by the parties.

(6) A mediation that results in agreement between the claimant and the grower must be documented by the mediator and signed by an authorized representative of each party. The mediator shall retain an original copy of the signed agreement. The agreement is binding upon the claimant and the grower.

(7) The deliberations and the outcome of the mediation may not be made public unless agreed to by the grower and the claimant.

(8) The requirement for mediation does not apply to a claimant seeking judicial relief to conduct sampling pursuant to 80-5-603 and may not be used to delay the ability of a claimant or grower to obtain samples. An action filed to secure evidence following a grower's refusal to allow entry does not violate the mediation requirements of this section.

History: En. Sec. 4, Ch. 260, L. 2011.

80-5-605. Venue. If a contract between a grower and a claimant of an intellectual property right violation is silent with regard to venue for any legal proceedings regarding intellectual property rights, venue must be in the district court for the district in which the alleged intellectual property right violation occurred.

History: En. Sec. 5, Ch. 260, L. 2011.

80-5-606. Rulemaking. The department shall adopt rules for the purposes of implementing this part. The rules must include but are not limited to:

(1) the procedure for requesting the department's presence during sampling;

(2) the fees to be charged for the department's attendance and sampling services;

(3) notification procedures related to the mandatory mediation process; and

(4) a sampling protocol that provides that:

(a) the standards used for the field sampling and laboratory tests meet minimum standards as requested by the claimant; and

(b) samples must be submitted for testing within 10 days of the date of sampling.

History: En. Sec. 6, Ch. 260, L. 2011.

CHAPTER 6
APICULTURE

Part 1 — Registration — Apis Bees

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80-6-1113. Repealed.
80-6-1114. Repealed.
80-6-1115. Repealed.

Chapter Cross-References

Department of Agriculture and special levies created, Art. XII, sec. 1, Mont. Const.

Taxation provisions — tax exemption provisions, 15-6-201, 15-6-206, 15-6-207.

Taxation provisions — agricultural appraisal — valuation of land as agricultural, Title 15, ch. 7, part 2.

Land use — Realty Transfer Act — exceptions for agricultural lands, 15-7-307.

Land use — assessment rates for agricultural lands — market value standard — valuation exception for agricultural implements and machinery, 15-8-111.

Financial obligations — obligations on "seed loans" — County Treasurers' lists of delinquent loans, 15-16-701.

Per capita tax levy to pay expenses of enforcing livestock laws, 15-24-921.

Taxation provisions — individual income tax exceptions for farmers and ranchers, 15-30-2512.

Taxation provisions — corporate income tax exemption for agricultural and horticultural organizations, 15-31-102.

Taxation provisions — gasoline and special fuel taxes, Title 15, ch. 70, part 4.

Agricultural vehicle provisions — exemption of farm implements from certain identification requirements, 61-3-431, 69-12-408.

Agricultural vehicle provisions — motor vehicle license exemption for tractor drivers, 61-5-104, 61-8-101.

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Agricultural vehicle provisions — slow-moving vehicles — equipment requirements, 61-9-415.

Agricultural vehicle provisions — special fees for certain farm vehicles, 61-10-206.

Land use — relocation of power lines upon installation of agricultural improvements — sprinkler irrigation systems, Title 69, ch. 4, part 4.

Land use — relocation of farm persons displaced when land condemned, Title 70, ch. 31, parts 1 and 3.

Agricultural liens — threshers' liens, 71-3-124; Title 71, ch. 3, part 8.

Agricultural liens — farm laborers' liens, Title 71, ch. 3, part 4.

Agricultural liens — crop liens for seed or grain and liens for hail insurance, Title 71, ch. 3, part 7.

Agricultural liens — agisters' liens and liens for service, Title 71, ch. 3, part 12.

Land use — land use planning boards, Title 76, ch. 1.

Land use — local regulation of subdivisions — agriculture-related provisions, 76-3-207, 76-3-401, 76-3-608.

Land use — state lands classification, Title 77, ch. 1, part 4.

Land use — conflicting or harmonious leasing of state lands for mining and agricultural purposes, 77-3-104, 77-3-120, 77-3-207.

Part 1
Registration — Apis Bees

80-6-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Apiary" means a location where one or more colonies of bees are kept or one or more hives containing honeycombs or bee combs are kept.

(2) "Bee diseases" means a disease or abnormal condition of egg, larval, pupal, or adult stages of bees. Specific bee diseases that are subject to regulation under parts 1 through 3 of this chapter must be designated by department rule.

(3) "Bees" means any stage Apis mellifera and all European subspecies.

(4) "Colony" means the bees and the hive and all equipment used in connection with that hive.

(5) "Department" means the department of agriculture, provided for in 2-15-3001.

(6) "Equipment" means hives, supers, frames, veils, gloves, or any apparatus, tools, machines, or other devices used in the handling and manipulation of bees, honey, wax, and hives. The term includes containers of honey and wax used in an apiary or in transporting bees and their products and includes apiary supplies.

(7) "Family unit" means two or more persons living together or residing in the same dwelling, house, or other place of residence.

(8) "General apiary site" means an apiary site other than a pollination apiary site, landowner apiary site, or hobbyist apiary site.

(9) "Hive" means a frame hive, box hive, box, barrel, log gum, skep, or other receptacle or container or a part of a container, natural or artificial, used as a domicile for bees.

(10) "Hobbyist apiary site" means an apiary site registered by a hobbyist beekeeper.

(11) "Hobbyist beekeeper" means a person who owns a total of no more than five hives.

(12) (a) "Landowner" means the person who has the use and exclusive possession of the land upon which the apiary is to be registered.

(b) The term does not include a person leasing or renting land for the primary purpose of locating or establishing an apiary.

(13) "Landowner apiary site" means an apiary site registered by a landowner.

(14) "Persons" means individuals, associations, partnerships, or corporations.

(15) "Pest" means the African honeybee (Apis mellifera scutellata and Apis mellifera capensis), those honeybees Africanized by interbreeding with the African honeybee, and any other parasite or predator that attacks the egg, larval, pupal, or adult stages of the honeybee that are subject to regulation under parts 1 through 3 of this chapter as identified by rule of the department.

(16) "Pollination apiary site" means an apiary site registered for pollination of a commercial seed, fruit, or other commercial agricultural product as provided in 80-6-112.

History: En. Sec. 1, Ch. 79, L. 1947; amd. Sec. 1, Ch. 475, L. 1973; Sec. 82-805, R.C.M. 1947; amd. and redes. 3-3101 by Sec. 128, Ch. 218, L. 1974; R.C.M. 1947, 3-3101; amd. Sec. 1, Ch. 125, L. 1981; amd. Sec. 1, Ch. 198, L. 1987; amd. Sec. 1, Ch. 9, L. 1991; amd. Sec. 1, Ch. 491, L. 1993; amd. Sec. 72, Ch. 7, L. 2001; amd. Sec. 2, Ch. 11, L. 2003; amd. Sec. 2, Ch. 468, L. 2009.

80-6-102. Registration classes — reregistration — fees. (1) A person who owns or possesses an apiary in the state shall, before April 1 each year, reregister the apiary site. A person who owns or possesses any bees, hives, colonies, or beekeeping equipment in this state or who owns or possesses an apiary in this state and who fails or refuses to register or reregister as provided in this part is subject to a civil penalty as set forth in 80-6-303.

(2) (a) Before a certificate of registration may be issued for an apiary site, the owner or applicant for a certificate shall pay a reregistration fee to the department. From July 1, 2019, to June 30, 2021, the department may not charge a hobbyist beekeeper an annual hobbyist apiary site registration or reregistration fee in excess of $19.

(b) The annual fee for reregistering an apiary site may not be less than $10 or more than $50. The department may adjust the fee by rule to maintain adequate funding for this part.

(c) If, after reregistration, additional or new apiary sites are authorized for a registered apiary, fees must be paid by the registrant in accordance with subsection (2)(b).

(d) A site reregistration not applied for by April 1 of each year is a delinquent reregistration and is subject to a penalty fee of 10% of the regular reregistration fee or $10, whichever is greater.

(3) (a) A registrant who fails to apply for reregistration by April 1 of each year must be notified of the delinquency by the department. Notification must be by certified mail, addressed to the registrant at the registrant's most recent address listed in the department's apiary registration files and is considered sufficient when deposited in a United States post office box or mail box on or before April 21.

(b) If a delinquent reregistration is not reregistered by June 1, the registration is forfeited and all rights under the registration are terminated. After June 1, apiary sites that have not been reregistered may be deleted from the registration database.

(4) There are four classes of apiary site registration. The conditions under which the department may issue certificates of registration for each class are specified in 80-6-111 through 80-6-114.

(5) Registration application blanks must be furnished by the department. The applicant shall provide the following information:

(a) a statement of the applicant's name, telephone number, and mailing address;

(b) the location of the apiary site, specifically the nearest quarter section, section, township, and range or the GPS coordinates of the site;

(c) the name of the current owner, renter, or occupant of the land on which the apiary site is located;

(d) when the application is for a new apiary site being registered for the first time, the application must also show that the owner, renter, or occupant of the land has consented in writing to the apiary being located on that land;

(e) the class of apiary site registration for which application is being made; and

(f) other information that the department may require under rules adopted by it for the protection, safety, and welfare of the public and the beekeeping industry.

(6) Upon receipt of the application and payment of the fees prescribed, the department may issue certificates of registration for the apiary sites, setting forth the name of the owner, the specific locations, and the class of apiary sites authorized by the registration.

(7) In issuing certificates of registration for apiary sites, if there is a conflict between applicants with respect to location, the department shall give preference to the applicant having the oldest continuously registered apiary site.

(8) Suitable evidence of registration must be posted by the apiary registrant in a conspicuous place at or near the apiary site. If an owner has more than one apiary site, suitable evidence of registration must be posted at each apiary site. If the identity of hives cannot be determined, the apiary site may be quarantined by the department and all hives may be removed, destroyed, sold at public auction, or handled in another appropriate manner at the discretion of the department.

(9) A reregistration may not be granted pursuant to this section if a civil penalty due under 80-6-303 has not been paid.

History: En. Sec. 3, Ch. 79, L. 1947; amd. Sec. 2, Ch. 28, L. 1953; amd. Sec. 3, Ch. 475, L. 1973; Sec. 82-807, R.C.M. 1947; amd. and redes. 3-3103 by Sec. 130, Ch. 218, L. 1974; amd. Sec. 2, Ch. 25, L. 1977; R.C.M. 1947, 3-3103; amd. Sec. 2, Ch. 125, L. 1981; amd. Sec. 2, Ch. 198, L. 1987; amd. Sec. 2590, Ch. 56, L. 2009; amd. Sec. 3, Ch. 468, L. 2009; amd. Sec. 1, Ch. 379, L. 2019.

80-6-103. Changing locations — transfer of apiary sites. (1) An owner of a registered apiary site may not change the location of the apiary site without first receiving authorization from the department to establish the new apiary site if the apiary site is outside the currently registered quarter section. In making the application, the owner shall specify the location of the apiary site with the same particularity as in the application for original registration.

(2) If the new apiary site is not used within 60 days after a new certificate of registration is issued, the certificate of registration lapses and all rights under the registration terminate.

(3) A registered apiary site may be transferred subject to parts 1 through 3 of this chapter if all bees and equipment on the apiary site are sold to the transferee.

History: En. 3-3104 by Sec. 131, Ch. 218, L. 1974; amd. Sec. 3, Ch. 25, L. 1977; R.C.M. 1947, 3-3104; amd. Sec. 8, Ch. 125, L. 1981; amd. Sec. 2591, Ch. 56, L. 2009; amd. Sec. 4, Ch. 468, L. 2009.

80-6-104. Apiaries — termination of rights — abandonment. (1) Except for a hobbyist apiary site, the registration of an apiary site that is not stocked with at least 10 working hives for 10 consecutive days between April 1 and October 1 of each year is considered forfeited. Exceptions may be granted by the department if sites cannot be used because of a natural disaster or other circumstances. When an exception is granted, movement of hives must be to other registered apiary sites.

(2) If an apiary site is not regularly attended in accordance with good beekeeping practice and that lack of attendance comprises a hazard or threat to disease or pest control in the

beekeeping industry, if by reason of its physical condition or construction an apiary site cannot be inspected, or if an apiary site is not registered in accordance with 80-6-102, the apiary site may be considered abandoned and the bees and equipment at the site may be seized by the department.

(3) Any pest-infected equipment, diseased equipment, or equipment that by reason of its physical condition or construction cannot be inspected may be burned.

(4) Abandoned equipment and bees may be sold by the department at public auction. Proceeds, after the cost of the sale is deducted, may be returned to the former owner or the former owner's estate, if the owner is known, or placed in the apiary account in 80-6-315 if the owner cannot be determined.

(5) Before burning or selling any equipment, the department shall give the owner or person in charge of the apiary site a written notice at least 5 days before the burning or sale. The notice must be by certified mail or personal service upon the owner or person in charge of the apiary site. If the owner or person in charge of the apiary site cannot be located, a certified letter sent to the owner's most recent address registered with the department is sufficient notice under this section. At least 5 days before the burning or sale, a legal notice must also be published in a newspaper in the county where the equipment was found.

(6) Before burning any equipment pursuant to subsection (3), the department shall notify the owner of the land on which the apiary site is located.

History: En. 3-3105 by Sec. 132, Ch. 218, L. 1974; amd. Sec. 4, Ch. 25, L. 1977; R.C.M. 1947, 3-3105; amd. Sec. 3, Ch. 198, L. 1987; amd. Sec. 2592, Ch. 56, L. 2009; amd. Sec. 5, Ch. 468, L. 2009.

80-6-105. Repealed. Sec. 14, Ch. 468, L. 2009.

History: En. Sec. 4, Ch. 79, L. 1947; amd. Sec. 1, Ch. 175, L. 1973; amd. Sec. 4, Ch. 475, L. 1973; Sec. 82-808, R.C.M. 1947; amd. and redes. 3-3106 by Sec. 133, Ch. 218, L. 1974; amd. Sec. 5, Ch. 25, L. 1977; R.C.M. 1947, 3-3106; amd. Sec. 2, Ch. 300, L. 1979; amd. Sec. 4, Ch. 198, L. 1987; amd. Sec. 2, Ch. 491, L. 1993; amd. Sec. 3, Ch. 11, L. 2003.

80-6-106. Application fee. (1) At the time a new application to register an apiary site is submitted to the department by an owner or applicant not currently registered in the department's apiary database, the owner or applicant shall pay an application fee. Except as provided in subsection (2), the fee may not be less than $10 or more than $100.

(2) From July 1, 2019, to June 30, 2021, the department may not charge an owner or applicant who is a hobbyist beekeeper and is not registered in the department's apiary database a hobbyist apiary site application fee in excess of $19.

(3) Except as provided in subsection (2), the department may adjust the fee by rule to maintain adequate funding for this part.

History: En. Sec. 1, Ch. 468, L. 2009; amd. Sec. 2, Ch. 379, L. 2019.

80-6-107 through 80-6-110 reserved.

80-6-111. General apiary site registrations. (1) In order to control, limit, and prevent the spread of bee diseases, pests, and other contagious or infectious diseases among bees, hives, and apiaries and to control, limit, and prevent interference with the proper feeding and honey flow, as it relates to bee health of established apiaries, general apiary sites must be located 3 or more miles apart except as otherwise provided in this part. The department may not register or issue a certificate of registration for any apiary site except as provided in this section.

(2) A person may register a general apiary site that is situated less than 3 miles from another general apiary site that the person has registered if the location of the general apiary site being applied for is 3 or more miles from general apiary sites registered to other persons.

(3) A general apiary site may be registered even if it is less than 3 miles from any registered pollination apiary site, landowner apiary site, or hobbyist apiary site.

(4) (a) A person with an existing apiary site that is located less than 3 miles from an existing general apiary site may register that apiary site as a general apiary site under the following conditions:

(i) the existing apiary site is registered with the department as a general apiary site as of July 1, 1981;

(ii) the registration of the existing apiary site has not been forfeited or abandoned under the provisions of 80-6-102(3) or 80-6-104.

(b) General apiary sites registered prior to July 1, 1981, may be moved if authorized by the department.

(5) Certificates of registration may not be issued for new apiary sites that are within such close proximity to established registered apiary sites that there is or may be danger of the spread of disease or pests or if the proximity will or may interfere with the proper feeding and honey flow of established apiaries.

(6) Before registering new apiary sites, the department shall give at least 10 days' notice by certified mail to all registered apiarists who are likely to be affected by the proposed new apiary site. Any affected party may file a written protest with the department against registering the new apiary site. If a written protest is filed, the department may require a hearing. Notice of the time and place of the hearing must be given to all interested parties by certified mail at least 10 days before the date set for the hearing. If a hearing is held, the department in its discretion may issue or refuse to issue the new apiary site registration.

History: En. Sec. 3, Ch. 125, L. 1981; amd. Sec. 5, Ch. 198, L. 1987; amd. Sec. 2593, Ch. 56, L. 2009; amd. Sec. 6, Ch. 468, L. 2009.

80-6-112. Pollination apiary site registrations. (1) The department may grant pollination apiary site registrations to commercial seed producers, fruit producers, or other commercial agricultural producers under the following conditions:

(a) (i) the applicant must own, lease, or rent the land upon which the pollination apiary site is to be located and the applicant must use the land for the purpose of growing a commercial seed, fruit, or other crop that is dependent upon bees or other insects for pollination;

(ii) the applicant may not own the bees or the hives that are to be placed upon the pollination apiary site; and

(iii) the only purpose of the pollination apiary site is to pollinate a commercial agricultural crop.

(b) The applicant shall provide the department with all pertinent information necessary to determine if pollination apiary sites are needed to adequately pollinate the applicant's crop.

(c) The department may refuse to register a pollination apiary site based upon its own investigation, but if the department approves the application, it shall specify the number and location of pollination apiary sites needed for the purpose of adequately pollinating the applicant's commercial agricultural crop.

(2) A pollination apiary site registration is valid only for the time specified by the department, and all pollination apiaries must be removed within 2 weeks after the full bloom period of the crop to be pollinated.

(3) A certificate of registration of a pollination apiary site may not be leased, assigned, or transferred. A person, other than the pollination apiary site registrant, may not exercise any rights or privileges, directly or indirectly, authorized by the certificate of registration.

(4) The department shall attempt to notify any general apiarist with registered apiary sites located within 3 miles of a proposed pollination apiary site of the potential location of the proposed pollination apiary site.

History: En. Sec. 4, Ch. 125, L. 1981; amd. Sec. 7, Ch. 468, L. 2009.

80-6-113. Landowner apiary site registrations. (1) The department may grant landowner apiary site registrations under the following conditions:

(a) The applicant must be a landowner and must own the land upon which the apiary site will be located.

(b) The applicant must own the bees and the hives that will be placed on the apiary site.

(c) The bees and the hives must be personally managed and operated by the applicant.

(2) A certificate of registration of a landowner apiary site may not be leased, assigned, or transferred. A person, other than the landowner apiary site registrant, may not exercise any rights or privileges, directly or indirectly, authorized by the certificate of registration.

(3) The department shall attempt to notify any general apiarist with registered apiary sites located within 3 miles of a proposed landowner apiary site of the potential location of the landowner apiary site.

(4) When a landowner apiary business changes to a general apiary business, the landowner apiary sites established and registered with the department as landowner apiary sites under the department's rules in effect prior to July 1, 2009, remain valid regardless of

location with regard to other apiary sites, including general apiary sites within 3 miles, as long as the registration of the landowner apiary sites has not been forfeited or abandoned pursuant to 80-6-102 or 80-6-104.

History: En. Sec. 5, Ch. 125, L. 1981; amd. Sec. 8, Ch. 468, L. 2009.

80-6-114. Hobbyist apiary site — registrations. (1) The department may grant hobbyist apiary site registrations to hobbyist beekeepers under the following conditions:

(a) the applicant may not own a total of more than 10 hives, and all of the hives must be placed on the hobbyist apiary site;

(b) the applicant shall own the bees and the hives and shall personally manage and operate the bees and the hives; and

(c) only five hobbyist apiary site registrations are allowed for an applicant and only five hobbyist apiary site registrations are allowed for a family unit.

(2) A certificate of registration of a hobbyist apiary site may not be leased, assigned, or transferred. A person, other than the hobbyist apiary site registrant, may not exercise any rights or privileges, directly or indirectly, authorized by the certificate of registration.

History: En. Sec. 6, Ch. 125, L. 1981; amd. Sec. 6, Ch. 198, L. 1987; amd. Sec. 9, Ch. 468, L. 2009; amd. Sec. 3, Ch. 379, L. 2019; amd. Sec. 1, Ch. 701, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 701, L. 2025. Amendment effective October 1, 2025.

80-6-115. Repealed. Sec. 14, Ch. 468, L. 2009.

History: En. Sec. 7, Ch. 125, L. 1981.

Part 2
Inspection and Certification — Apis Bees

80-6-201. Apiaries — powers and duties of department. (1) To prevent the spread of pests and contagious and infectious disease among bees and apiaries, the department may:

(a) enter private land containing an apiary site and fly over or enter any farm, railroad right-of-way, or other grounds or premises containing an apiary site to determine the health or ownership of the bees. The department shall provide at least 24 hours' notice to a private landowner before entering private land.

(b) order the transfer of colonies of bees from hives or containers that cannot be properly examined for brood or other diseases to other hives or containers;

(c) order disinfection of any bees, hives, brood comb, or any other equipment that is infected or contaminated with disease or pests and burn the infected or contaminated bees, hives, brood comb, or any other equipment if, in its judgment, disinfection will not remove the infection or contamination. Before burning any property, the department shall give the person to whom the apiary site is registered a written notice at least 5 days before the date the property will be burned. The notice must be given by certified mail or personal service. Before burning any equipment, the department shall notify the owner of the land on which the apiary site is located.

(d) quarantine any apiary site where pests, foulbrood, or any other contagious or infectious diseases are present with the following conditions:

(i) During the quarantine, the department shall prevent the removal from the apiary site of any bees or equipment except under a special permit issued by the department permitting the removal under conditions prescribed by the department.

(ii) A person may not sell or offer for sale any apiary site, bees, or equipment under quarantine unless a permit authorizing the sale or removal is issued by the department.

(iii) Written notice of quarantine must be posted by the department, owner, or person in charge at the quarantined apiary site at a conspicuous place, and a copy must be personally served or sent by certified mail to the owner of the apiary site at the owner's last-known address or to the person in charge. The quarantine continues in effect until it is ordered removed and a copy of the removal order is served in the same manner.

(iv) The owner or person in charge of the quarantined apiary site may enter the premises for standard care and maintenance of the bees.

(e) establish by rule interior and exterior quarantines to prevent the entry or spread of diseases or pests that are not known to occur in Montana;

(f) inspect apiaries, hives, equipment, or premises for the presence of disease or pests;

(g) inspect any apiary site at the request of and at the expense of any interested party;

(h) promulgate and enforce rules adopted pursuant to parts 1 through 3 of this chapter.

(2) A person failing to comply with a rule, order, or provision of a quarantine pursuant to this section is subject to penalties provided for in 80-6-303.

(3) The department may provide disease and pest inspection, sampling, and laboratory analysis services for a fee. The department shall adopt rules setting the fee commensurate with costs and establishing procedures for sampling and analysis.

(4) The department may enter into agreements with the United States department of agriculture, other federal agencies, other states, municipal authorities, and individual Montana beekeepers in carrying out the provisions of this part.

History: En. Sec. 2, Ch. 79, L. 1947; amd. Sec. 1, Ch. 28, L. 1953; amd. Sec. 2, Ch. 475, L. 1973; Sec. 82-806, R.C.M. 1947; amd. and redes. 3-3102 by Sec. 129, Ch. 218, L. 1974; amd. Sec. 1, Ch. 25, L. 1977; R.C.M. 1947, 3-3102; amd. Sec. 7, Ch. 198, L. 1987; amd. Sec. 2, Ch. 9, L. 1991; amd. Sec. 10, Ch. 468, L. 2009; amd. Sec. 4, Ch. 379, L. 2019.

80-6-202. Inspection of bees or used beekeeping equipment transported interstate. (1) Bees and beekeeping equipment, unless under a certificate of health that allows for seasonal transportation of bees and beekeeping equipment into Montana without inspection, that are transported into Montana from another state must be certified as pest-free and disease-free by either the originating state or by the department. A person who transports bees or beekeeping equipment into Montana shall present the required certification to the department. If the bees or beekeeping equipment cannot be certified as pest-free and disease-free, the bees or beekeeping equipment must be treated appropriately under the supervision of a federal authority, a representative of the originating state, or a representative of the department.

(2) The department must be advised in advance of the date of entry and the destination of the bees or material. Used equipment or bees transported into the state may be quarantined by the department, in accordance with 80-6-201(1)(d), from the time they enter the state until they have been inspected and found to be apparently free of pests and diseases or until they have been in use while under quarantine for a minimum of 90 days. The beekeeping materials are also subject to quarantine as provided in this section.

(3) The department may also inspect and certify as being apparently pest-free and disease-free bees or beekeeping equipment to be transported from Montana to a state that requires an inspection in the state of origin.

(4) (a) The costs of making the inspections provided for in subsections (1) through (3) must be paid by the owner of the bees or equipment following the inspection.

(b) Inspection fees for persons without a valid Montana inspection must include:

(i) per diem pursuant to Title 2, chapter 18, part 5;

(ii) necessary traveling expenses; and

(iii) an hourly rate established by department rule. The department may adjust the fee by rule to maintain adequate funding for this part. The fee may not be less than $50 or more than $150.

(c) Persons transporting bees interstate with a valid Montana certificate of health shall pay inspection fees that include:

(i) per diem pursuant to Title 2, chapter 18, part 5;

(ii) necessary traveling expenses; and

(iii) a fee for the issuance of a certificate of health, which may not be less than $50 or more than $150. The department may adjust the fee by rule to maintain adequate funding for this part.

(d) If inspection by an official of any other state is considered insufficient for the protection of the Montana bee industry by the department, the department shall state that fact by public statement. Importation of bees or beekeeping materials, including honey for extracting, from that other state must be denied unless the materials, bees, or honey is first inspected by the department and there is obtained from the department a certificate of inspection showing that the materials, bees, or honey is apparently free from pests and contagious or infectious disease.

The costs of making the inspection must be paid by the person requesting it, and inspection may be made at any point outside this state convenient to the person making the inspection. The department may require that the costs of making the inspection be paid in advance, and the costs must include:

(i) per diem pursuant to Title 2, chapter 18, part 5;

(ii) necessary traveling expenses;

(iii) an hourly rate established by department rule; and

(iv) a fee for the issuance of the certificate of inspection. The department may adjust the fee by rule to maintain adequate funding for this part. The fee may not be less than $50 or more than $150.

History: En. Sec. 5, Ch. 79, L. 1947; amd. Sec. 3, Ch. 28, L. 1953; amd. Sec. 5, Ch. 475, L. 1973; Sec. 82-809, R.C.M. 1947; amd. and redes. 3-3107 by Sec. 134, Ch. 218, L. 1974; amd. Sec. 6, Ch. 25, L. 1977; R.C.M. 1947, 3-3107; amd. Sec. 4, Ch. 300, L. 1979; amd. Sec. 8, Ch. 198, L. 1987; amd. Sec. 3, Ch. 9, L. 1991; amd. Sec. 4, Ch. 11, L. 2003; amd. Sec. 11, Ch. 468, L. 2009.

80-6-203. Importation of bees in packages or queen cages. A person or common carrier may not transport or bring bees into this state in packages or queen cages unless the packages or queen cages are accompanied by a certificate of health issued by the official inspector of the state or country from which they came.

History: En. Sec. 6, Ch. 79, L. 1947; Sec. 82-810, R.C.M. 1947; amd. and redes. 3-3108 by Sec. 135, Ch. 218, L. 1974; R.C.M. 1947, 3-3108; amd. Sec. 12, Ch. 468, L. 2009.

Part 3
General Provisions — Apis Bees

80-6-301. Orders effective until reversed or modified by court. An order or rule adopted by the department, including an order refusing a permit for the establishment of a new apiary location, is effective until reversed or modified by a final decision of a court of competent jurisdiction and while such action is pending, as defined in 25-1-103. An injunction or other process or writ may not be issued by a court restraining enforcement until that final determination.

History: En. Sec. 10, Ch. 79, L. 1947; amd. Sec. 7, Ch. 475, L. 1973; Sec. 82-814, R.C.M. 1947; amd. and redes. 3-3112 by Sec. 139, Ch. 218, L. 1974; amd. Sec. 23, Ch. 13, L. 1977; R.C.M. 1947, 3-3112.

80-6-302. Repealed. Sec. 6, Ch. 11, L. 2003.

History: En. Sec. 7, Ch. 79, L. 1947; amd. Sec. 6, Ch. 475, L. 1973; Sec. 82-811, R.C.M. 1947; amd. and redes. 3-3109 by Sec. 136, Ch. 218, L. 1974; R.C.M. 1947, 3-3109.

80-6-303. Penalty. (1) (a) Except as provided in subsection (2), a person violating or aiding in the violation of parts 1 through 3 of this chapter or rules adopted under parts 1 through 3 is subject to an administrative civil penalty of not more than $1,000 for each offense. Assessment of a penalty under this subsection (1) may be made in conjunction with any other warning, order, or administrative action that is issued by the department under this part. The proceeds of an administrative civil penalty must be deposited in the state special revenue account provided for in 80-6-315.

(b) A person who is assessed a penalty for violating parts 1 through 3 of this chapter is also subject to payment of costs incurred by the department for inspections or investigations related to the violation.

(2) (a) A person violating or aiding in the violation of the provisions of 80-6-202 is subject to an administrative civil penalty of not more than $10,000 for each offense. Assessment of a penalty under this subsection (2)(a) may be made in conjunction with any other warning, order, or administrative action that is issued by the department under this part. The proceeds of an administrative civil penalty must be deposited in the state special revenue account provided for in 80-6-315.

(b) A person who is assessed a penalty for violating 80-6-315 is also subject to payment of costs incurred by the department for inspections or investigations related to the violation.

(3) The department shall establish by rule a penalty matrix that schedules the types of penalties, the amounts of penalties for initial and subsequent offenses, and any other matters necessary for the administration of civil penalties under subsection (1). The issuance of a civil penalty is subject to the contested case procedures of Title 2, chapter 4, part 6.

(4) This part may not be construed as requiring the department or its representatives to report violations of this part when it is believed that the public interest will be best served by a suitable notice of warning.

History: En. Sec. 8, Ch. 79, L. 1947; Sec. 82-812, R.C.M. 1947; amd. and redes. 3-3110 by Sec. 137, Ch. 218, L. 1974; R.C.M. 1947, 3-3110; amd. Sec. 3, Ch. 491, L. 1993; amd. Sec. 5, Ch. 11, L. 2003; amd. Sec. 13, Ch. 468, L. 2009.

80-6-304 through 80-6-310 reserved.

80-6-311. Bee laboratory authorized. The department or a party designated by the department may develop and maintain a laboratory to provide disease and pest analytical services required to carry out the provisions of this part. The laboratory may be authorized by the department to provide services to persons possessing any bees or equipment on a fee basis pursuant to 80-6-201(3).

History: En. Sec. 9, Ch. 198, L. 1987.

80-6-312 through 80-6-314 reserved.

80-6-315. State special revenue account — source of funds. (1) There is an apiary account in the state special revenue fund established in 17-2-102. All funds received by the department under parts 1 through 3 must be deposited in the apiary account.

(2) The department may direct the board of investments to invest the funds collected under subsection (1), pursuant to the provisions of 17-6-201. The interest and income from the investments must be credited to the account provided for in subsection (1).

History: En. Sec. 1, Ch. 11, L. 2003.

Parts 4 through 10 reserved

Part 11
Alfalfa Leaf-Cutting Bees

80-6-1101. *(Temporary)* **Short title.** This part may be cited as the "Alfalfa Leaf-Cutting Bee Management Act". *(Repealed effective July 1, 2026—sec. 6, Ch. 426, L. 2025, sec. 8, Ch. 426, L. 2025.)*

History: En. Sec. 1, Ch. 331, L. 1981; amd. Sec. 1, Ch. 310, L. 1987.

80-6-1102. *(Temporary)* **Definitions.** As used in this part, the following definitions apply:

(1) "Bee" means any stage in the life cycle of a bee of the species Megachile rotundata (F), commonly known as the alfalfa leaf-cutting bee.

(2) "Certification" means the process of analyzing bees and equipment by the committee to determine whether they meet required standards.

(3) "Chalkbrood" means a fungal disease that attacks larvae of the alfalfa leaf-cutting bee.

(4) "Committee" means the Montana alfalfa seed committee established in 2-15-3004.

(5) "Department" means the department of agriculture established in 2-15-3001.

(6) "Equipment" means shelters, trays, incubators, cell removers, tumblers, and other apparatus, except nesting materials, used in rearing bees.

(7) "Nest destroyer" means any organism that competes with the bee larvae for nest provisions.

(8) "Nesting materials" means laminates, drilled boards, and other apparatus used in nesting bees.

(9) "Parasite" means an organism living in or on any stage of the alfalfa leaf-cutting bee obtaining nutriment from the body of the bee.

(10) "Pathogen" means an organism that causes disease in the alfalfa leaf-cutting bee.

(11) "Person" means an individual, association, partnership, or corporation.

(12) "Predator" means any organism or insect that preys on, devours, or destroys bees or nests.

(13) "Wild trap" means to intentionally trap bees on property not owned or leased by the trapper.

80-6-1102. *(Effective July 1, 2026)* **Definitions.** As used in this part, the following definitions apply:

(1) "Bee" means any stage in the life cycle of a bee of the species Megachile rotundata (F), commonly known as the alfalfa leaf-cutting bee.

(2) "Department" means the department of agriculture established in 2-15-3001.

(3) "Equipment" means shelters, trays, incubators, cell removers, tumblers, and other apparatus, except nesting materials, used in rearing bees.

(4) "Nesting materials" means laminates, drilled boards, and other apparatus used in nesting bees.

(5) "Person" means an individual, association, partnership, or corporation.

History: En. Sec. 2, Ch. 331, L. 1981; amd. Sec. 1, Ch. 97, L. 1983; amd. Sec. 2, Ch. 310, L. 1987; amd. Sec. 2, Ch. 167, L. 1989; amd. Sec. 1, Ch. 57, L. 1995; amd. Sec. 2, Ch. 4, L. 1997; amd. Sec. 1, Ch. 426, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 426, L. 2025. Amendment effective July 1, 2026.

80-6-1103. *(Temporary)* **Committee responsibilities — adoption of rules.** (1) The committee is responsible for the administration of this part.

(2) The committee shall by rule adopt minimum standards for the presence of pathogens and parasites.

(3) The committee may adopt rules establishing minimum standards for the presence of predators and nest destroyers in bees to be certified, imported, quarantined, and possessed or controlled in the state of Montana.

(4) The committee may provide information and services relating to the rearing of alfalfa leaf-cutting bees and alfalfa seed production.

(5) The committee may enter into agreements with other governmental agencies or private associations in carrying out the provisions of this part.

(6) In performing its duties under this part, the committee may:

(a) enter upon any public or private premises to inspect equipment and sample bees;

(b) by rule establish quarantines to regulate the entry of bees, equipment, and nesting material into areas of Montana specified in the quarantines;

(c) quarantine any bees, equipment, or nesting material found to be infected or contaminated at levels exceeding importation or quarantine standards;

(d) order the disinfection, destruction, or removal of any bees, equipment, or nesting material that does not meet importation or quarantine standards.

(7) Upon receiving notification of nesting material or bees that appear to be abandoned, the committee shall contact the owner as soon as possible to correct the problem. If the owner cannot be found, the nesting material or bees must be considered abandoned and the procedures for disposition of abandoned property set out in Title 70, chapter 9, must be followed.

(8) (a) Whenever the committee has reasonable cause to believe a person is in possession of any bees or equipment in violation of this part or rules adopted under it, the committee may order a quarantine of the suspected bees or equipment and may require any person in possession of the bees or equipment to hold them under specified conditions until notified otherwise in writing by the committee.

(b) The committee shall release any quarantine upon finding that the bees and equipment are in compliance with this part. *(Repealed effective July 1, 2026—sec. 6, Ch. 426, L. 2025, sec. 8, Ch. 426, L. 2025.)*

History: En. Sec. 3, Ch. 331, L. 1981; amd. Sec. 2, Ch. 97, L. 1983; amd. Sec. 3, Ch. 310, L. 1987; amd. Sec. 3, Ch. 167, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

80-6-1104. *(Temporary)* **Advisory duty of committee.** The committee shall advise the department with respect to any contemplated rulemaking. The committee shall meet periodically to review the minimum standards adopted under this part. *(Repealed effective July 1, 2026—sec. 6, Ch. 426, L. 2025, sec. 8, Ch. 426, L. 2025.)*

History: En. Sec. 5, Ch. 331, L. 1981; amd. Sec. 4, Ch. 310, L. 1987; amd. Sec. 4, Ch. 167, L. 1989.

80-6-1105. *(Temporary)* **Alfalfa leaf-cutting bees — certification.** (1) A person possessing or controlling alfalfa leaf-cutting bees in the state of Montana may annually certify all or part of the person's bees as provided in this section.

(2) To certify bees, a person shall file a completed application form provided by the department, together with a fee set by rule. The applicant shall provide the following:

(a) name and place of residence;

(b) the general location and number of bees to be certified; and

(c) other relevant information as may be required by committee rule.

(3) After receipt of an application for certification, a sample of the total population of bees to be certified must be selected by the committee or its agent in a manner prescribed by the committee. The sample must be analyzed for pathogens, parasites, predators, nest destroyers, and live larvae count. If certification standards are met, the sample must be certified.

(4) All bees to be certified may be stored in containers that can be officially sealed after sampling to maintain their certification identity.

(5) When the committee has in its possession a completed application form, an appropriate fee, and a report that the sample meets certification standards, it may issue a certificate for the bees.

(6) The committee shall by rule specify the date by which any applicant shall apply for recertification the following year. *(Repealed effective July 1, 2026—sec. 6, Ch. 426, L. 2025, sec. 8, Ch. 426, L. 2025.)*

History: En. Sec. 6, Ch. 331, L. 1981; amd. Sec. 3, Ch. 97, L. 1983; amd. Sec. 6, Ch. 310, L. 1987; amd. Sec. 5, Ch. 167, L. 1989; amd. Sec. 2594, Ch. 56, L. 2009.

80-6-1106. Bee laboratory authorized. The department or its agent may develop and maintain a laboratory for the purpose of providing analytical services. The laboratory may be authorized by the department to provide services to persons possessing any bees or equipment on a fee-for-service basis.

History: En. Sec. 7, Ch. 331, L. 1981; amd. Sec. 1, Ch. 51, L. 1985; amd. Sec. 7, Ch. 310, L. 1987; amd. Sec. 6, Ch. 167, L. 1989; amd. Sec. 2, Ch. 426, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 426, L. 2025. Amendment effective July 1, 2025.

80-6-1107. *(Temporary)* **Restrictions on importing bees.** Bees may not be imported except in loose cells or as adults. Bees may not be imported in a drilled board, soda straw, or other equipment that prevents adequate sampling of the bees. *(Repealed effective July 1, 2026—sec. 6, Ch. 426, L. 2025, sec. 8, Ch. 426, L. 2025.)*

History: En. Sec. 8, Ch. 331, L. 1981; amd. Sec. 4, Ch. 97, L. 1983; amd. Sec. 8, Ch. 310, L. 1987; amd. Sec. 7, Ch. 167, L. 1989; amd. Sec. 2, Ch. 57, L. 1995.

80-6-1108. *(Temporary)* **Restrictions on rearing, moving, and trapping of bees and movement of equipment.** (1) A person may not wild trap within 1 mile of registered bees without the written permission of the registrant.

(2) A person may not move any quarantined bee or equipment except by special permit issued by the committee.

(3) A person may not wild trap or attempt to wild trap bees unless that person has been issued a permit for that activity in accordance with rules adopted by the committee. The committee shall by rule establish the permit fee. *(Repealed effective July 1, 2026—sec. 6, Ch. 426, L. 2025, sec. 8, Ch. 426, L. 2025.)*

History: En. Sec. 9, Ch. 331, L. 1981; amd. Sec. 5, Ch. 97, L. 1983; amd. Sec. 9, Ch. 310, L. 1987; amd. Sec. 8, Ch. 167, L. 1989; amd. Sec. 3, Ch. 57, L. 1995.

80-6-1109. Fees to be set by rule — account established. (1) Fees authorized to be charged by this part must be set by department rule.

(2) There is an account in the state special revenue fund known as the leaf-cutting bee account for use by the department. The account is made up of:

(a) fees collected under this part; and

(b) any grants, donations, or gifts made to the department and designated for the purposes of this part.

(3) The department may direct the board of investments to invest money from the account pursuant to the provisions of the unified investment program. The income from investments must be credited to the leaf-cutting bee account.

History: En. Sec. 10, Ch. 331, L. 1981; amd. Sec. 42, Ch. 281, L. 1983; amd. Sec. 10, Ch. 310, L. 1987; amd. Sec. 9, Ch. 167, L. 1989; amd. Sec. 23, Ch. 486, L. 2009; amd. Sec. 1, Ch. 102, L. 2015; amd. Sec. 3, Ch. 426, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 426, L. 2025. Amendment effective July 1, 2025.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

80-6-1110. *(Temporary)* **Violation — penalty.** A person who imports, possesses, controls, moves, or wild traps or attempts to import, possess, control, move, or wild trap any bee or equipment in violation of this part or who interferes with or attempts to interfere with the efforts of the committee or its agent to perform its duty under this part is guilty of a misdemeanor and upon conviction shall be fined not less than $300 or more than $500 for the first conviction and not less than $300 or more than $1,000 for each subsequent conviction. *(Repealed effective July 1, 2026—sec. 6, Ch. 426, L. 2025, sec. 8, Ch. 426, L. 2025.)*

History: En. Sec. 11, Ch. 331, L. 1981; amd. Sec. 10, Ch. 167, L. 1989.

80-6-1111. Alfalfa leaf-cutting bees — registration. (1) A person may not possess or control alfalfa leaf-cutting bees in this state unless the bees are registered as provided in this section.

(2) To register bees, a person shall file a completed application form provided by the department, together with the registration fee set by rule. The applicant shall provide the following:

(a) the name and place of residence;

(b) the general location of bees to be registered; and

(c) other relevant information as may be required by department rule.

(3) A registration is continuous until the registrant notifies the department of cancellation.

History: En. Sec. 5, Ch. 310, L. 1987; amd. Sec. 11, Ch. 167, L. 1989; amd. Sec. 4, Ch. 57, L. 1995; amd. Sec. 4, Ch. 426, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 4, Ch. 426, L. 2025. Amendment effective July 1, 2025.

80-6-1112. *(Temporary)* **Funding limitation.** (1) The committee shall expend only those funds deposited in the special revenue account provided for in 80-6-1109. In the event that funds are insufficient to finance the costs of services under this part, the committee may reduce services accordingly.

(2) The committee may contract lab services with a qualified person and charge growers at cost on a per-sample basis.

(3) The committee may levy a fee set by committee rule not to exceed 30 cents for each 3,000 holes of nesting material deeper than 3½ inches for the purpose of administering this part and for the sampling and testing of bees. For nesting material 3½ inches deep or less, the fee may not exceed 16 cents per 2,000 holes of nesting material.

(4) Fees must be based on all nesting materials that are in field use on July 15 of each year. Fees are due on November 1 of each year.

(5) The amount of fees paid must be credited against a grower's cost of sampling and certification.

(6) Certification fees for drilled boards or loose cells may not exceed committee cost. *(Repealed effective July 1, 2026—sec. 6, Ch. 426, L. 2025, sec. 8, Ch. 426, L. 2025.)*

History: En. Sec. 11, Ch. 310, L. 1987; amd. Sec. 12, Ch. 167, L. 1989; amd. Sec. 2, Ch. 102, L. 2015.

80-6-1113. Repealed. Sec. 5, Ch. 57, L. 1995.

History: En. Sec. 13, Ch. 167, L. 1989.

80-6-1114. Repealed. Sec. 5, Ch. 57, L. 1995.

History: En. Sec. 14, Ch. 167, L. 1989.

80-6-1115. Repealed. Sec. 5, Ch. 57, L. 1995.

History: En. Sec. 15, Ch. 167, L. 1989.

CHAPTER 7
DISEASE, PEST, AND WEED CONTROL

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80-7-102. Repealed.
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Chapter Cross-References

Department of Agriculture and special levies created, Art. XII, sec. 1, Mont. Const.
Taxation provisions — tax exemption provisions, 15-6-201, 15-6-206, 15-6-207.
Taxation provisions — agricultural appraisal — valuation of land as agricultural, Title 15, ch. 7, part 2.
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Agricultural vehicle provisions — exemption of farm implements from certain identification requirements, 61-3-431, 69-12-408.
Agricultural vehicle provisions — motor vehicle license exemption for tractor drivers, 61-5-104, 61-8-101.
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Agricultural vehicle provisions — slow-moving vehicles — equipment requirements, 61-9-415.
Agricultural vehicle provisions — special fees for certain farm vehicles, 61-10-206.
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Agricultural liens — threshers' liens, 71-3-124; Title 71, ch. 3, part 8.
Agricultural liens — farm laborers' liens, Title 71, ch. 3, part 4.
Agricultural liens — crop liens for seed or grain and liens for hail insurance, Title 71, ch. 3, part 7.
Fertilizer and pesticide liens, Title 71, ch. 3, part 9.
Agricultural liens — agisters' liens and liens for service, Title 71, ch. 3, part 12.
Land use — land use planning boards, Title 76, ch. 1.
Land use — local regulation of subdivisions — agriculture-related provisions, 76-3-207, 76-3-401, 76-3-608.
Land use — state lands classification, Title 77, ch. 1, part 4.
Land use — conflicting or harmonious leasing of state lands for mining and agricultural purposes, 77-3-104, 77-3-120, 77-3-207.
Montana Wildlife Habitat Improvement Act, Title 87, ch. 5, part 8.

Part 1
Control of Diseases and Insects in Nurseries

Part Cross-References

County insect control, Title 7, ch. 22, part 23.

80-7-101. Repealed. Sec. 12, Ch. 551, L. 1993.

History: En. 3-1201.1 by Sec. 53, Ch. 218, L. 1974; amd. Sec. 1, Ch. 155, L. 1975; R.C.M. 1947, 3-1201.1.

80-7-102. Repealed. Sec. 12, Ch. 551, L. 1993.

History: En. Sec. 1, Ch. 220, L. 1943; amd. Sec. 1, Ch. 121, L. 1963; amd. Sec. 63, Ch. 218, L. 1974; amd. Sec. 1, Ch. 151, L. 1975; R.C.M. 1947, 3-1212; amd. Sec. 3, Ch. 300, L. 1979; amd. Sec. 6, Ch. 620, L. 1987; amd. Sec. 1, Ch. 151, L. 1991.

80-7-103. Repealed. Sec. 12, Ch. 551, L. 1993.

History: En. Sec. 2, Ch. 220, L. 1943; amd. Sec. 64, Ch. 218, L. 1974; R.C.M. 1947, 3-1213.

80-7-104. Renumbered 80-7-107. Code Commissioner, 1993.

80-7-105. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Firm" means an individual, company, partnership, association, or corporation.

(2) "Landscape service" means a firm that buys, sells, or resells nursery stock.

(3) "Nursery" means the business or location where nursery stock is grown, offered for sale, or distributed.

(4) "Nursery stock" means botanically classified plants or parts of plants, including but not limited to tropical potted plants, aquatic plants, and turf or sod grass. Certain plants and plant materials intended for human or animal consumption and not intended for planting may not be considered nursery stock, including the following:

(a) commodity plants and their seeds;

(b) pasture grasses;

(c) cut plants not for propagation;

(d) fruits or vegetables for human or animal consumption;

(e) cut trees and products that are going to be processed to a point that they no longer represent a pest risk; and

(f) plant debris for disposal or processing.

(5) "Plant dealer" means a firm that buys plants or plant products from a producer for the purpose of offering the plants or plant products for sale or resale or as part of a landscape service.

(6) "Plant inspection certificate" means a document issued by the department or the plant pest regulatory agency of another state that declares that the nursery stock, plants, or plant material grown by the firm named on the certificate is apparently free of injurious plant pests.

(7) "Plant pest" means an insect, weed, fungus, virus, bacteria, or other organism that can directly or indirectly injure or cause damage in a plant or a product of a plant and that meets the criteria as a pest established by department rule. For purposes of this chapter, noxious weeds, as defined in 7-22-2101, or other exotic weeds are defined as plant pests.

History: En. Sec. 1, Ch. 551, L. 1993; amd. Sec. 20, Ch. 407, L. 2001; amd. Sec. 1, Ch. 384, L. 2007; amd. Sec. 2, Ch. 393, L. 2009; amd. Sec. 1, Ch. 389, L. 2017; amd. Sec. 6, Ch. 92, L. 2019.

80-7-106. License required — application and payment of license fee — exemption. (1) (a) Except as provided in subsection (1)(b), a firm, nursery, plant dealer, or landscape service engaging in the business of selling or distributing nursery stock in this state shall obtain a license from the department for each location.

(b) A firm, nursery, plant dealer, or landscape service is not required to obtain a license in Montana if the firm, nursery, plant dealer, or landscape service is licensed as a nursery in another state and the state in which the firm, nursery, plant dealer, or landscape service is licensed grants nonresident licenses to residents of this state on the same basis.

(2) The license must be in the name of the firm, nursery, plant dealer, or landscape service seeking the license and expires on the anniversary date established by rule by the board of review established in 30-16-302. The applicant shall provide information that the department finds necessary to carry out the provisions and purposes of this chapter and in the form determined by rule by the board of review established in 30-16-302.

(3) (a) The license fees for each location for a firm, nursery, or plant dealer are as follows:

Gross annual sales of nursery stock:	Fee range:
not more than $5,000	$25 to $35
$5,001 to $75,000	$135 to $185
$75,001 to $150,000	$200 to $250
$150,001 to $250,000	$300 to $350
Over $250,000	$400 to $450

(b) A landscape service shall pay a license fee of not less than $150 or more than $200. A landscape service that sells nursery stock shall pay a license fee for either a landscape service or a nursery, whichever is greater.

(c) A sod farmer shall pay a license fee of not less than $220 or more than $270.

(d) The department may adjust by rule a license fee within the fee range described in this subsection (3) to maintain funding for this part. When calculating a license fee, the department shall adjust gross sales down to the nearest dollar.

(4) A new applicant or a firm, nursery, plant dealer, or landscape service failing to renew a license for any location on or before the annual anniversary date provided for in subsection (2) shall pay an additional nonrefundable late fee of $25 for the license for the location.

(5) The fees required by this section may be paid by credit card.

History: En. Sec. 2, Ch. 551, L. 1993; amd. Sec. 1, Ch. 147, L. 1995; amd. Sec. 17, Ch. 366, L. 1997; amd. Sec. 7, Ch. 54, L. 1999; amd. Sec. 2, Ch. 384, L. 2007; amd. Sec. 2, Ch. 384, L. 2009; amd. Sec. 1, Ch. 393, L. 2009; amd. Sec. 1, Ch. 341, L. 2011; amd. Sec. 2, Ch. 389, L. 2017.

80-7-107. Grounds for refusal or revocation of license. The department, in accordance with Title 2, chapter 4, may refuse to issue a license or it may revoke a license under this part when:

(1) the firm has been adjudged bankrupt, insolvent, or guilty of fraud or deceit by a court of competent jurisdiction; or

(2) a verified complaint is made to the department that a licensee has failed to comply with this part.

History: En. Sec. 3, Ch. 220, L. 1943; amd. Sec. 65, Ch. 218, L. 1974; R.C.M. 1947, 3-1214; amd. Sec. 9, Ch. 551, L. 1993; Sec. 80-7-104, MCA 1991; redes. 80-7-107 by Code Commissioner, 1993.

80-7-108. Nursery stock inspections. The department:

(1) may enter the premises of a licensed firm, nursery, plant dealer, or landscape service during regular business hours for the purpose of inspecting nursery stock or other materials for possible plant pests or for determining licensure compliance; and

(2) shall, pursuant to rules promulgated by the department, determine the schedule, the need for inspections based on complaints received and the department's assessment of risk to the state from potential plant pests, and the expected amount of time for the inspections.

History: En. Sec. 3, Ch. 551, L. 1993; amd. Sec. 3, Ch. 384, L. 2007; amd. Sec. 3, Ch. 384, L. 2009; amd. Sec. 2, Ch. 341, L. 2011; amd. Sec. 3, Ch. 389, L. 2017.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

80-7-109. Duty to notify department of infestation. A firm, nursery, plant dealer, or landscape service with nursery stock or other materials that are infected or infested with plant pests shall notify the department. The firm, nursery, plant dealer, or landscape service shall comply with the instructions of the department for the control of the plant pests.

History: En. Sec. 4, Ch. 551, L. 1993; amd. Sec. 4, Ch. 384, L. 2007; amd. Sec. 4, Ch. 384, L. 2009; amd. Sec. 4, Ch. 389, L. 2017.

80-7-110. Removal of nursery stock — assessment of costs. If a firm, nursery, plant dealer, or landscape service that owns nursery stock or other materials infected or infested with any injurious plant pest fails to comply with the instructions of the department for the destruction or control of the injurious plant pest or the destruction of the infested or infected nursery stock or other material within the time specified by the department, the department may condemn, remove, or destroy the nursery stock or other material or treat it with a proper remedy at the expense of the owner.

History: En. Sec. 45, Ch. 216, L. 1921; re-en. Sec. 3617, R.C.M. 1921; re-en. Sec. 3617, R.C.M. 1935; amd. Sec. 1, Ch. 86, L. 1939; amd. Sec. 56, Ch. 218, L. 1974; R.C.M. 1947, 3-1204; amd. Sec. 22, Ch. 526, L. 1983 amd. Sec. 10, Ch. 551, L. 1993; Sec. 80-7-114, MCA 1991; redes. 80-7-110 by Code Commissioner, 1993; amd. Sec. 5, Ch. 384, L. 2007; amd. Sec. 5, Ch. 384, L. 2009; amd. Sec. 5, Ch. 389, L. 2017.

80-7-111. Repealed. Sec. 12, Ch. 551, L. 1993.

History: En. Sec. 43, Ch. 216, L. 1921; re-en. Sec. 3614, R.C.M. 1921; re-en. Sec. 3614, R.C.M. 1935; amd. Sec. 1, Ch. 112, L. 1939; amd. Sec. 1, Ch. 89, L. 1945; amd. Sec. 52, Ch. 218, L. 1974; R.C.M. 1947, 3-1201.

80-7-112. Repealed. Sec. 12, Ch. 551, L. 1993.

History: En. 3-1201.2 by Sec. 1, Ch. 150, L. 1975; R.C.M. 1947, 3-1201.2.

80-7-113. Repealed. Sec. 12, Ch. 551, L. 1993.

History: En. Sec. 1926, Rev. C. 1907 by Sec. 1, Ch. 121, L. 1911; re-en. Sec. 3616, R.C.M. 1921; re-en. Sec. 3616, R.C.M. 1935; amd. Sec. 55, Ch. 218, L. 1974; R.C.M. 1947, 3-1203.

80-7-114. Renumbered 80-7-110. Code Commissioner, 1993.

80-7-115. Repealed. Sec. 12, Ch. 551, L. 1993.

History: En. Sec. 46, Ch. 216, L. 1921; re-en. Sec. 3618, R.C.M. 1921; re-en. Sec. 3618, R.C.M. 1935; amd. Sec. 57, Ch. 218, L. 1974; R.C.M. 1947, 3-1205.

80-7-116. Repealed. Sec. 12, Ch. 551, L. 1993.

History: En. Sec. 48, Ch. 215, L. 1921; re-en. Sec. 3620, R.C.M. 1921; re-en. Sec. 3620, R.C.M. 1935; Sec. 58, Ch. 218, L. 1974; R.C.M. 1947, 3-1206.

80-7-117. Repealed. Sec. 12, Ch. 551, L. 1993.

History: En. Sec. 49, Ch. 216, L. 1921; re-en. Sec. 3621, R.C.M. 1921; re-en. Sec. 3621, R.C.M. 1935; amd. Sec. 59, Ch. 218, L. 1974; R.C.M. 1947, 3-1207.

80-7-118. Repealed. Sec. 12, Ch. 551, L. 1993.

History: En. Sec. 1929, Rev. C. 1907 by Sec. 1, Ch. 121, L. 1911; re-en. Sec. 3623, R.C.M. 1921; re-en. Sec. 3623, R.C.M. 1935; amd. Sec. 60, Ch. 218, L. 1974; amd. Sec. 2, Ch. 155, L. 1975; R.C.M. 1947, 3-1209.

80-7-119. Repealed. Sec. 12, Ch. 551, L. 1993.

History: En. Sec. 50, Ch. 216, L. 1921; re-en. Sec. 3624, R.C.M. 1921; re-en. Sec. 3624, R.C.M. 1935; amd. Sec. 61, Ch. 218, L. 1974; R.C.M. 1947, 3-1210.

80-7-120. Repealed. Sec. 12, Ch. 551, L. 1993.

History: En. Sec. 5, Ch. 220, L. 1943; amd. Sec. 66, Ch. 218, L. 1974; R.C.M. 1947, 3-1216.

80-7-121. Repealed. Sec. 7, Ch. 7, L. 1997.

History: En. Sec. 6, Ch. 551, L. 1993.

80-7-122. Repealed. Sec. 10, Ch. 389, L. 2017.

History: En. Sec. 7, Ch. 551, L. 1993; amd. Sec. 6, Ch. 384, L. 2007; amd. Sec. 6, Ch. 384, L. 2009.

80-7-123. Nursery account — investment of funds. (1) There is an account in the state special revenue fund. All fee revenue and reimbursements for costs authorized under 80-7-106, 80-7-110, 80-7-135, and this section must be deposited in this account. Revenue in the account must be used for the purposes and provisions of this part.

(2) Revenue received under 80-7-106, 80-7-110, 80-7-135, and this section not immediately required for the purposes of 80-7-106, 80-7-110, 80-7-135, and this section must be invested in accordance with the unified investment program established in Title 17, chapter 6, part 2. Income from the investments must be deposited in the account.

History: En. Sec. 8, Ch. 551, L. 1993; amd. Sec. 5, Ch. 7, L. 1997; amd. Sec. 289, Ch. 42, L. 1997; amd. Sec. 7, Ch. 384, L. 2007; amd. Sec. 6, Ch. 389, L. 2017.

80-7-124 through 80-7-130 reserved.

80-7-131. Repealed. Sec. 12, Ch. 551, L. 1993.

History: En. Sec. 44, Ch. 216, L. 1921; re-en. Sec. 3615, R.C.M. 1921; re-en. Sec. 3615, R.C.M. 1935; amd. Sec. 54, Ch. 218, L. 1974; R.C.M. 1947, 3-1202.

80-7-132. Cooperation — agreements with other governmental agencies. The director may cooperate with and enter into agreements with governmental agencies of this state, other states, and agencies of the federal government in order to carry out the purpose and provisions of this part.

History: En. 3-1219 by Sec. 1, Ch. 149, L. 1975; R.C.M. 1947, 3-1219.

80-7-133. Acts made unlawful — penalty. (1) It is unlawful for a firm, nursery, plant dealer, or landscape service to:

(a) fail to properly identify nursery stock offered for sale. Identification must include but is not limited to the scientific name, common name, and variety, except with regard to mixed annual plantings. Each nursery plant offered for sale as a separate plant must be identified. A single means of identification is allowed on each bundle of bare root seedlings, liners, or hedging grade nursery stock.

(b) falsely represent or misrepresent the name, age, variety, or class of any nursery stock sold or offered for sale;

(c) falsely represent or state that any nursery stock offered for sale, sold, or delivered was grown in a certain location, when in fact the nursery stock was grown in another location;

(d) deceive or defraud any firm in the sale of any nursery stock by substituting inferior or different varieties or ages from those ordered;

(e) bring into this state, offer for sale or distribution within this state, or ship, sell, or deliver upon any sale any nursery stock that is infected or infested with a plant pest dangerous to the agricultural or horticultural interests of the state or that violates any federal or state quarantine; or

(f) sell or distribute nursery stock, cut decorative plants, or aquatic plants declared to be noxious weeds as defined in 7-22-2101.

(2) In case of misrepresentation, false representation, deceit, fraud, substitution, or sale and distribution of noxious weeds, the firm, nursery, plant dealer, or landscape service is subject to punishment as provided in 80-7-135 and is liable to a party damaged or injured to the extent of all damages sustained, which may be recovered in a civil action in any court of competent jurisdiction.

History: En. Sec. 4, Ch. 220, L. 1943; amd. Sec. 15, Ch. 13, L. 1977; R.C.M. 1947, 3-1215; amd. Sec. 11, Ch. 551, L. 1993; amd. Sec. 21, Ch. 407, L. 2001; amd. Sec. 8, Ch. 384, L. 2007; amd. Sec. 7, Ch. 384, L. 2009; amd. Sec. 7, Ch. 389, L. 2017.

80-7-134. Repealed. Sec. 12, Ch. 551, L. 1993.

History: En. Sec. 51, Ch. 216, L. 1911; re-en. Sec. 3625, R.C.M. 1921; re-en. Sec. 3625, R.C.M. 1935; Sec. 3-1211, R.C.M. 1947; amd. and redes. 3-1218 by Sec. 62, Ch. 218, L. 1974; R.C.M. 1947, 3-1218.

80-7-135. Penalty for violation. (1) A firm, nursery, plant dealer, or landscape service that violates or aids in the violation of a provision of this part or of the rules, orders, or quarantines of the department adopted under Title 2, chapter 4, and this part commits a civil offense and is subject to a civil penalty of not more than $1,000 for each violation.

(2) Assessment of a civil penalty may be made in conjunction with another warning, order, or administrative action authorized by this chapter. A civil penalty collected under this section must be deposited in the nursery account established in 80-7-123 for response activities of the department, education, training, research, and development for the nursery industry pursuant to rules established by the department.

(3) The department shall establish by rule:

(a) a penalty schedule that establishes the types of penalties and the amounts, not to exceed $1,000, for initial and subsequent offenses; and

(b) other matters necessary for the administration of civil penalties.

(4) Sections 80-7-105, 80-7-106, 80-7-108, 80-7-109, 80-7-123, and this section may not be construed as requiring the department or its agents to report violations of this part when the department believes that the public interest will be best served by a suitable notice of warning.

History: En. Sec. 5, Ch. 551, L. 1993; amd. Sec. 6, Ch. 7, L. 1997; amd. Sec. 9, Ch. 384, L. 2007; amd. Sec. 8, Ch. 384, L. 2009; amd. Sec. 8, Ch. 389, L. 2017.

Part 2
Fruit and Vegetable Pest and Disease Control (Repealed)

80-7-201. Repealed. Sec. 12, Ch. 551, L. 1993.

History: En. Sec. 39, Ch. 216, L. 1921; re-en. Sec. 3610, R.C.M. 1921; re-en. Sec. 3610, R.C.M. 1935; amd. Sec. 1, Ch. 29, L. 1963; amd. Sec. 49, Ch. 218, L. 1974; R.C.M. 1947, 3-1103.

80-7-202. Repealed. Sec. 12, Ch. 551, L. 1993.

History: En. Sec. 40, Ch. 216, L. 1921; re-en. Sec. 3611, R.C.M. 1921; re-en. Sec. 3611, R.C.M. 1935; amd. Sec. 50, Ch. 218, L. 1974; R.C.M. 1947, 3-1104.

80-7-203. Repealed. Sec. 12, Ch. 551, L. 1993.

History: En. Sec. 42, Ch. 216, L. 1921; re-en. Sec. 3613, R.C.M. 1921; re-en. Sec. 3613, R.C.M. 1935; amd. Sec. 51, Ch. 218, L. 1974; R.C.M. 1947, 3-1106.

80-7-204. Repealed. Sec. 12, Ch. 551, L. 1993.

History: En. Sec. 1935, Rev. C. 1907 by Sec. 1, Ch. 121, L. 1911; amd. Sec. 1, Ch. 99, L. 1915; re-en. Sec. 3626, R.C.M. 1921; re-en. Sec. 3626, R.C.M. 1935; amd. Sec. 1, Ch. 90, L. 1939; amd. Sec. 67, Ch. 218, L. 1974; R.C.M. 1947, 3-1301.

80-7-205. Repealed. Sec. 12, Ch. 551, L. 1993.

History: En. Sec. 52, Ch. 216, L. 1921; re-en. Sec. 3627, R.C.M. 1921; re-en. Sec. 3627, R.C.M. 1935; amd. Sec. 68, Ch. 218, L. 1974; R.C.M. 1947, 3-1302.

80-7-206. Repealed. Sec. 12, Ch. 551, L. 1993.

History: (1) thru (3)En. Sec. 53, Ch. 216, L. 1921; re-en. Sec. 3628, R.C.M. 1921; re-en. Sec. 3628, R.C.M. 1935; amd. Sec. 69, Ch. 218, L. 1974; Sec. 3-1303, R.C.M. 1947; (4)En. Sec. 54, Ch. 216, L. 1921; re-en. Sec. 3629, R.C.M. 1921; re-en. Sec. 3629, R.C.M. 1935; Sec. 3-1304, R.C.M. 1947; R.C.M. 1947, 3-1303, 3-1304; amd. Sec. 23, Ch. 526, L. 1983.

80-7-207. Repealed. Sec. 12, Ch. 551, L. 1993.

History: En. Sec. 1, Ch. 61, L. 1913; re-en. Sec. 3631, R.C.M. 1921; re-en. Sec. 3631, R.C.M. 1935; amd. Sec. 71, Ch. 218, L. 1974; R.C.M. 1947, 3-1306.

80-7-208. Repealed. Sec. 12, Ch. 551, L. 1993.

History: En. Sec. 2, Ch. 61, L. 1913; amd. Sec. 1, Ch. 89, L. 1921; re-en. Sec. 3632, R.C.M. 1921; re-en. Sec. 3632, R.C.M. 1935; R.C.M. 1947, 3-1307.

80-7-209. Repealed. Sec. 12, Ch. 551, L. 1993.

History: En. Sec. 3, Ch. 61, L. 1913; re-en. Sec. 3633, R.C.M. 1921; re-en. Sec. 3633, R.C.M. 1935; amd. Sec. 72, Ch. 218, L. 1974; R.C.M. 1947, 3-1308.

80-7-210. Repealed. Sec. 12, Ch. 551, L. 1993.

History: En. 3-1309 by Sec. 73, Ch. 218, L. 1974; R.C.M. 1947, 3-1309; amd. Sec. 188, Ch. 575, L. 1981.

Part 3
Barberry Control
(Repealed)

80-7-301. Repealed. Sec. 12, Ch. 551, L. 1993.

History: (1)En. Sec. 3, Ch. 40, L. 1919; re-en. Sec. 3605, R.C.M. 1921; re-en. Sec. 3605, R.C.M. 1935; Sec. 3-1003, R.C.M. 1947; (2)En. Sec. 4, Ch. 40, L. 1919; re-en. Sec. 3606, R.C.M. 1921; re-en. Sec. 3606, R.C.M. 1935; amd. Sec. 48, Ch. 218, L. 1974; Sec. 3-1004, R.C.M. 1947; R.C.M. 1947, 3-1003, 3-1004.

80-7-302. Repealed. Sec. 12, Ch. 551, L. 1993.

History: En. Sec. 1, Ch. 40, L. 1919; re-en. Sec. 3603, R.C.M. 1921; re-en. Sec. 3603, R.C.M. 1935; R.C.M. 1947, 3-1001.

80-7-303. Repealed. Sec. 12, Ch. 551, L. 1993.

History: En. Sec. 2, Ch. 40, L. 1919; re-en. Sec. 3604, R.C.M. 1921; re-en. Sec. 3604, R.C.M. 1935; amd. Sec. 47, Ch. 218, L. 1974; R.C.M. 1947, 3-1002.

80-7-304. Repealed. Sec. 12, Ch. 551, L. 1993.

History: En. Sec. 5, Ch. 40, L. 1919; re-en. Sec. 3607, R.C.M. 1921; re-en. Sec. 3607, R.C.M. 1935; R.C.M. 1947, 3-1005.

Part 4
Quarantine and Pest Management

80-7-401. Short title. This part may be cited as the "Montana Quarantine and Pest Management Act".

History: En. Sec. 1, Ch. 7, L. 1997.

80-7-402. Quarantines and pest management procedures — department rules. The department may adopt rules concerning:

(1) intrastate and interstate quarantines;

(2) procedures to investigate and enforce quarantines to prevent the introduction or spread of plant pests, plants capable of spreading plant pests, plants defined as noxious weeds in 7-22-2101, and other exotic plants defined by department rule as plant pests;

(3) pest management standards and procedures for surveying and controlling plant pests;

(4) procedures for the introduction of plant pests and biological control agents into the state; and

(5) procedures for the recovery of expenses and imposition of penalties.

History: En. Sec. 2, Ch. 7, L. 1997.

80-7-403. Receipt and deposit of gifts, grants, and other funds. (1) To fund the provisions of 80-7-402, the department may receive funds from any source as gifts, grants, contracts, cost-share funds, and other funds, including civil penalties and recovered expenses.

(2) Except for funds received in the form of civil penalties, funds received pursuant to this section must be deposited in the produce account established in 80-3-304. Funds received in the form of civil penalties must be deposited in the general fund.

History: En. Sec. 3, Ch. 7, L. 1997.

80-7-404. Penalty. (1) A person who violates the quarantines, procedures, or rules of the department adopted under 80-7-402 commits a civil offense and is subject to a civil penalty of not more than $5,000 for each violation.

(2) Assessment of a civil penalty may be made in conjunction with another warning, order, or administrative action authorized by this part. A civil penalty collected under this section must be deposited in the general fund.

(3) The department shall establish by rule:

(a) a penalty schedule that establishes the types of penalties and the amounts, not to exceed $5,000, for initial and subsequent offenses; and

(b) other matters necessary for the enforcement of civil penalties.

(4) This section may not be construed as requiring the department or its agents to report violations of 80-7-402 when the department believes that the public interest will be best served by a suitable notice of warning.

History: En. Sec. 4, Ch. 7, L. 1997; amd. Sec. 1, Ch. 303, L. 2011.

Part 5
Crop Insect Detection and Management

Part Cross-References

County insect control, Title 7, ch. 22, part 23.

80-7-501. Definitions. As used in this part, the following definitions apply:

(1) "Alternative control program" means a system of controlling insect pest populations through biological or other means not involving toxic chemicals.

(2) "Cropland" means land used for the production of food and forage, including the headlands, ditches, and rights-of-way adjacent to such land.

(3) "Cropland spraying program" means the application of chemical or other substances to croplands for the purpose of preventing or destroying insect pests.

(4) "Emergency" means a serious insect pest infestation that meets the conditions of 10-3-311.

(5) "Infestation" means that a pest exists in such numbers, under certain conditions, and at certain times as to destroy or substantially damage or threaten to destroy livestock or other agricultural crops.

(6) "Insect pest" includes the grasshopper, cutworm, pale western cutworm, armyworm, chinch bug, and any other insect or arthropod generally recognized as a destroyer of grain, hay, range, and horticulture crops.

History: En. 3-3501 by Sec. 1, Ch. 433, L. 1975; amd. Sec. 27, Ch. 13, L. 1977; amd. Sec. 1, Ch. 362, L. 1977; R.C.M. 1947, 3-3501(1) thru (4), (6), (7).

80-7-502. Insect detection, surveillance, and control programs. The department may:

(1) employ permanent and seasonal personnel to administer this part;

(2) survey for and maintain surveillance of insect pests during appropriate seasons and enter upon any croplands in the course of conducting such surveillance;

(3) provide insect pest management services to particular agricultural commodity groups for the resolution of special or unusual insect pest problems;

(4) determine or assist a county to determine, upon investigation, whether a serious infestation exists or threatens to occur within a county;

(5) declare that an insect pest infestation constitutes a serious infestation;

(6) operate, contract for, or assist a county to obtain spraying or other appropriate services to counteract an actual or threatening serious infestation, having first determined that any person contracting to supply such services is properly equipped to apply substances designated and approved by the department;

(7) conduct, cooperate in, or coordinate upon request by any affected county, insect pest management services for serious pest infestations in one or more counties;

(8) assist counties, upon request, to coordinate county insect pest management programs in contiguous counties.

History: En. 3-3502 by Sec. 2, Ch. 433, L. 1975; amd. Sec. 2, Ch. 362, L. 1977; R.C.M. 1947, 3-3502.

80-7-503. Duties of department. The department may:

(1) develop and publish a list of pesticides approved for control of insect pests;

(2) develop and publish technical guidelines on techniques of controlling insect pests;

(3) notify a county of its survey results and state whether the infestation is normal or serious;

(4) review and comment on or review and approve all county agricultural insect pest management plans as provided by local government statutes and consider whether the plan conforms to the technical guidelines of the department and whether implementation of the plan will probably counteract the condition of insect pest infestation in a timely and proper manner;

(5) consider whether an alternative control program would be as efficient as spraying on a ratio of total costs to total benefits and provide the county with a summary of its findings prior to conducting or approving any cropland spraying program. If the alternative control program is considered adequate, the department may conduct or approve such a program.

History: En. 3-3503 by Sec. 3, Ch. 433, L. 1975; amd. Sec. 3, Ch. 362, L. 1977; R.C.M. 1947, 3-3503; amd. Sec. 1, Ch. 53, L. 1989.

Cross-References

Department defined, 80-1-101.

80-7-504. Financing of control program. (1) One-third of the costs of a cropland spraying program or alternative program conducted by the state shall be paid by the state. Prior to the implementation of any state or county control program, the department and the governing body of any county for which the program is proposed shall enter into an interlocal or management agreement on the maximum amount of moneys each shall appropriate or provide toward the proposed program. If either party does not sign and approve the agreement, the program may not be conducted.

(2) Individual farm and ranch landowners may formally petition by written affidavit protesting their inclusion within the proposed cropland spraying program. The department or local governing body shall refrain from spraying any land petitioned to be excluded. Such excluded land remains subject to assessment under 80-7-505. The governing body of any county for which a control program is intended shall proceed as provided by local government statutes.

(3) If the department conducts the program, it shall pay all costs of the program. The county shall pay its share and the landowner's share as provided in 80-7-505 to the department for deposit in the appropriate fund.

(4) If the county conducts the program, it shall pay all costs of the program including its share. The department shall pay one-third of the costs of the cropland spraying program from moneys appropriated for that purpose to the county in which the program was conducted. The county treasurer shall collect the landowner's special assessment as provided in 80-7-505.

History: En. 3-3504 by Sec. 4, Ch. 433, L. 1975; amd. Sec. 4, Ch. 362, L. 1977; R.C.M. 1947, 3-3504.

80-7-505. Computation and collection of assessments on landowners. Each owner of cropland benefited under a cropland spraying program is liable for the portion of the landowner's share of the program costs as the owner's cropland is a portion of all cropland within the boundaries of the program. The county treasurer shall compute each landowner's liability and mail a special assessment to each owner or occupier of land within the boundaries of the program. Unless otherwise mutually agreed upon, this assessment is due and payable within 32 days of mailing or 30 days of receipt if receipt is shown to be more than 2 days after mailing. A delinquent assessment is a lien upon the land assessed.

History: En. 3-3505 by Sec. 5, Ch. 433, L. 1975; amd. Sec. 5, Ch. 362, L. 1977; R.C.M. 1947, 3-3505; amd. Sec. 2595, Ch. 56, L. 2009.

80-7-506. Rangeland control programs. The department may enter into agreements with the United States department of agriculture for cooperative programs to control insect pest infestations on rangeland and to share the costs of such programs whenever funds have been appropriated and are available for that purpose.

History: En. 3-3506 by Sec. 6, Ch. 433, L. 1975; amd. Sec. 6, Ch. 362, L. 1977; R.C.M. 1947, 3-3506.

80-7-507. Administrative rules. The department may adopt rules necessary to carry out the intent of this part.

History: En. 3-3507 by Sec. 7, Ch. 362, L. 1977; R.C.M. 1947, 3-3507.

Cross-References
Adoption and publication of rules, Title 2, ch. 4, part 3.

80-7-508. Duties of cooperative extension service. (1) The cooperative extension service shall conduct investigations pertaining to insects and other arthropods affecting plants and animals. When an injurious infestation of an insect or other arthropod occurs in any part of the state, the authorized employees of the cooperative extension service shall go to the scene of the infestation, shall determine the extent and seriousness of the infestation, and shall make public the best remedies to be employed.

(2) The cooperative extension service shall cooperate with the agricultural experiment station in providing annual reports required under 80-7-814.

History: En. Sec. 2, Ch. 75, L. 1967; Sec. 82-804.2, R.C.M. 1947; amd. and redes. 75-8806 by Sec. 127, Ch. 218, L. 1974; R.C.M. 1947, 75-8806; amd. Sec. 2, Ch. 440, L. 1991; amd. Sec. 2, Ch. 472, L. 2005.

Cross-References
Cooperative agricultural extension work — assents of state to acts of Congress, 20-25-226.

Part 6 reserved

Part 7
Weed Control

Part Cross-References
County weed control, 7-14-2132; Title 7, ch. 22, part 21.
Herbicide liability restrictions, 7-22-2111.
Information on herbicide use, 7-22-2112.

80-7-701. Regulation of importation or sale of noxious weeds. (1) As used in this section:

(a) "native plant" means a plant indigenous to the state of Montana; and

(b) "native plant community" means an assemblage of native plants occurring in a natural habitat.

(2) The department may regulate or prohibit the importation or sale of grain, plants, seed, tubers, nursery stock, fruit, or other materials containing noxious weed seed or plants harmful to Montana's horticultural, agricultural, forestry, livestock, wildlife, or native plant communities.

History: En. Sec. 4, Ch. 195, L. 1939; amd. Sec. 1, Ch. 44, L. 1965; amd. Sec. 117, Ch. 218, L. 1974; R.C.M. 1947, 16-1708; amd. Sec. 2, Ch. 303, L. 1991; amd. Sec. 2, Ch. 98, L. 2003.

80-7-702. Rulemaking authority. The department of agriculture shall adopt all necessary rules for the regulation of the importation or sale of materials as provided in 80-7-701. The department in adopting the rules may provide for the establishment of inspection stations, the appointment of inspectors, the establishment of the inspection fees, the issuance of certificates, the methods of transporting and packaging, the regulation of nursery stock commerce, and other rules and procedures necessary to carry out 80-7-701 through 80-7-704.

History: En. Sec. 2, Ch. 44, L. 1965; amd. Sec. 118, Ch. 218, L. 1974; R.C.M. 1947, 16-1708.1; amd. Sec. 3, Ch. 303, L. 1991.

Cross-References
Adoption and publication of rules, Title 2, Ch. 4, part 3.
Analysis by seed laboratory — reports, 80-5-126.
Agricultural seed rules, 80-5-139.

80-7-703. Violations of importation rules — penalty. Any person who refuses to obey an order of an appointed inspector or willfully disobeys the provisions of 80-7-701 through 80-7-704 shall be guilty of a misdemeanor and upon conviction shall be fined not less than $50 and not more than $500.

History: En. Sec. 3, Ch. 44, L. 1965; R.C.M. 1947, 16-1708.2.

80-7-704. Disposition of fines and inspection fees. All fines levied as provided in 80-7-703, except fines paid to a justice's court, and all fees collected from inspections must be deposited with the department of revenue to the credit of the state special revenue fund for the use of the department for the purpose of administering and enforcing 80-7-701 through 80-7-704.

History: En. Sec. 4, Ch. 44, L. 1965; amd. Sec. 119, Ch. 218, L. 1974; R.C.M. 1947, 16-1708.3; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 51, Ch. 557, L. 1987; amd. Sec. 42, Ch. 257, L. 2001.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

State treasury fund structure, 17-2-102.

80-7-705. Weed management district program enhancement. (1) On an annual basis, the department shall distribute equally among Montana's counties that have established a noxious weed fund the funds in the noxious weed state special revenue account, provided for in 80-7-816, that were collected pursuant to 80-7-823 to be deposited in the county noxious weed fund as provided in 7-22-2141. Any unused portion must revert to the department for deposit in the noxious weed management trust fund established in 80-7-811.

(2) The weed management districts shall use the funds on a county level to enhance noxious weed management programs.

History: En. Sec. 3, Ch. 407, L. 2001.

80-7-706 through 80-7-710 reserved.

80-7-711. Technical assistance. The department is authorized to provide technical assistance and services to local governments, agricultural producers, and the general public on the management and control of noxious plants. This assistance and service may include:

(1) development, compilation, and reporting of information and records on noxious plant infestations in every county;

(2) information and data on the location of noxious plants and acres infested per county and major infestations of watersheds and geographical regions of the state;

(3) a determination of the economic and environmental impact of noxious plants on Montana and its citizens;

(4) providing technical assistance to various governmental units and citizens on managing long-term noxious plant control programs;

(5) delineation and recommendation of areas in the state where management programs or certain management tools should not be utilized because of economic or environmental considerations;

(6) information on the restrictions and proper use of pesticides and other management techniques;

(7) publishing of model quarantine standards for counties desiring to provide a quarantine program for noxious plants, plant parts, and seed transported in the county; and

(8) cooperation and coordination of activities with any government agency, private industry, or citizen.

History: En. 16-1724 by Sec. 1, Ch. 466, L. 1977; R.C.M. 1947, 16-1724.

80-7-712. Funding of noxious plant management programs. (1) The department may make every effort to obtain federal funds under 43 U.S.C. 1242 to implement management of noxious plants on federal lands in cooperation with any federal agency and the local government body responsible for noxious plant management. These federal funds shall be directly disbursed to local governments authorized to conduct noxious plant management programs. The department may require individual or multiple local government units wishing to apply for federal funds to make proper application for the funds following the management program, budget guidelines, and policies of the department, and the requirements of 43 U.S.C. 1241 through 1243. The department shall request 3% of the total federal funds received per year to cover the complete cost of administering, monitoring, and auditing the expenditure of these federal funds.

(2) The department may cooperate in and coordinate the planning and disbursement of these funds with federal, state, and local agencies responsible for management of noxious plants.

(3) The department may directly expend or provide federal or state funds to local governments to manage or eradicate new noxious plant infestations invading federal or state lands within the state.

(4) The department may hold a public hearing in the specific locale requesting funding prior to granting the federal funds. The department may determine if there are any special requirements or restrictions that should be incorporated into the management program prior to its implementation.

History: En. 16-1725 by Sec. 2, Ch. 466, L. 1977; R.C.M. 1947, 16-1725.

80-7-713. Reports. The department may prepare a biennial report on the status of noxious plants and their management in Montana. Reports may be submitted to the governor, to the legislature as provided in 5-11-210, and to other such groups and organizations as the department considers necessary.

History: En. 16-1726 by Sec. 3, Ch. 466, L. 1977; R.C.M. 1947, 16-1726; amd. Sec. 54, Ch. 112, L. 1991.

80-7-714. Rules. The department may adopt rules and policies necessary to implement 80-7-711 through 80-7-713 pursuant to the Montana Administrative Procedure Act.

History: En. 16-1727 by Sec. 4, Ch. 466, L. 1977; R.C.M. 1947, 16-1727.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

80-7-715 through 80-7-719 reserved.

80-7-720. Biological agents for weed control. (1) The department of agriculture is authorized to expend funds for the collection and distribution of biological agents to control leafy spurge and spotted knapweed. The project will reduce energy consumption by reducing the need for repeated chemical application.

(2) The department of natural resources and conservation is authorized to administratively transfer funds to the department of agriculture for the project described in subsection (1).

History: En. Sec. 8, HB 621, L. 1987.

Part 8
Noxious Weed Management Funding

Part Cross-References

County weed control, Title 7, ch. 22, part 21.

80-7-801. Definitions. As used in this part, the following definitions apply:

(1) "Crop weed" means any plant commonly accepted as a weed and for which grants for management research, evaluation, and education under 80-7-814(5)(g) may be given.

(2) "Department" means the department of agriculture established in 2-15-3001.

(3) "Noxious weed" means any weed defined in 7-22-2101(9)(a).

History: En. Sec. 1, Ch. 577, L. 1985; amd. Sec. 1, Ch. 15, L. 1987; amd. Sec. 1, Ch. 220, L. 1995; amd. Sec. 22, Ch. 407, L. 2001; amd. Sec. 3, Ch. 472, L. 2005; amd. Sec. 7, Ch. 92, L. 2019.

80-7-802. Rules. The department may adopt rules necessary to implement this part.

History: En. Sec. 8, Ch. 577, L. 1985.

80-7-803 and 80-7-804 reserved.

80-7-805. Noxious weed management advisory council. (1) The director of the department shall appoint a noxious weed management advisory council to provide advice to the department concerning the administration of this part and part 9 of this title.

(2) If appointed, the council must be composed of 11 members, as follows:

(a) the director of the department of agriculture, who shall serve as presiding officer;

(b) one member representing livestock production;

(c) one member representing agriculture crop production;

(d) one member from a recreationist/wildlife group;

(e) one member who is a herbicide dealer or applicator;

(f) one member representing noxious weed seed free material interests;

(g) one member representing weed research and control interests;

(h) one member from the Montana weed control association;

(i) two members representing counties, one each from the western and eastern parts of the state, which may include a county commissioner, district weed board member, or weed district supervisor; and

(j) one at-large member from the agricultural community.

History: En. Sec. 9, Ch. 577, L. 1985; amd. Sec. 1, Ch. 493, L. 1999; amd. Sec. 1, Ch. 65, L. 2023.

80-7-806 through 80-7-809 reserved.

80-7-810. Repealed. Sec. 253, Ch. 574, L. 2001.

History: En. Sec. 2, Ch. 639, L. 1987; amd. Sec. 7, Ch. 588, L. 1991; amd. Sec. 2, Ch. 493, L. 1999.

80-7-811. Noxious weed management trust fund. (1) As required by Article IX, section 6, of the Montana constitution, there is a noxious weed management trust fund of $10 million. The department shall administer the trust fund in accordance with this part.

(2) Deposits to the principal of the noxious weed management trust fund may include but are not limited to:

(a) federal contributions;

(b) private donations; and

(c) state contributions.

History: En. Sec. 2, Ch. 577, L. 1985; amd. Sec. 2, Ch. 220, L. 1995; amd. Sec. 3, Ch. 493, L. 1999; amd. Sec. 4, Ch. 472, L. 2005.

Cross-References

Fee in lieu of tax on off-highway vehicles — exception — disposition of fees, 23-2-803.

80-7-812. Repealed. Sec. 10, Ch. 220, L. 1995.

History: En. Sec. 3, Ch. 577, L. 1985; amd. Sec. 2, Ch. 15, L. 1987; amd. Sec. 6, Ch. 588, L. 1991.

80-7-813. Acceptance and expenditure of gifts and other funds. The department may accept gifts, grants, contracts, or other funds designated for noxious weed management. The funds must be deposited in the noxious weed management trust fund or in the account established in 80-7-816 and may be expended to support a noxious weed management project.

History: En. Sec. 4, Ch. 577, L. 1985; amd. Sec. 3, Ch. 220, L. 1995.

80-7-814. Administration and expenditure of funds. (1) The provisions of this section constitute the noxious weed management program.

(2) (a) Except as provided in subsection (2)(b), money deposited in the noxious weed management trust fund may not be committed or expended until the principal reaches $10 million.

(b) In the case of a noxious weed emergency, as provided in 80-7-815, a vote of three-fourths of the members of each house of the legislature may appropriate principal from the trust fund.

(c) Interest or revenue generated by the trust fund, excluding unrealized gains and losses, must be deposited in the noxious weed management special revenue fund and may be expended for noxious weed management projects before the principal of the noxious weed management trust reaches $10 million with a majority vote of each house of the legislature.

(d) Any grant funds, regardless of the time at which the grant was awarded, that are not fully expended upon termination of the contract or an extension of the contract, not to exceed 1 year, must revert to the department. The department shall use any reverted funds for future grant awards, provided the noxious weed management trust fund principal exceeds $10 million as provided in subsection (2)(a).

(e) The department may not apply for or receive grant awards from the noxious weed management special revenue fund.

(3) The principal of the noxious weed management trust fund in excess of $10 million may be appropriated by a majority vote of each house of the legislature. Appropriations of the principal in excess of $10 million may be used only to fund the noxious weed management program.

(4) The department may expend funds under this section through grants or contracts to communities, weed management districts, or other entities that it considers appropriate for noxious weed management projects. A project is eligible to receive funds only if the county in which the project occurs has funded its own weed management program using one of the following methods, whichever is less:

(a) levying an amount of not less than 1.6 mills or an equivalent amount from another source; or

(b) appropriating an amount of not less than $100,000 from any source.

(5) The department may expend funds without the restrictions specified in subsection (4) for the following:

(a) employment of a new and innovative noxious weed management project or the development, implementation, or demonstration of any noxious weed management project that

may be proposed, implemented, or established by local, state, or national organizations, whether public or private. The expenditures must be on a cost-share basis with the organizations.

(b) cost-share noxious weed management programs with local weed management districts;

(c) special grants to local weed management districts to eradicate or contain significant noxious weeds newly introduced into the county. These grants may be issued without matching funds from the district.

(d) costs incurred by the department for administering the noxious weed management program as follows:

(i) In fiscal year 2014, the funds used by the department for administering the program, including but not limited to personal services costs, operating costs, and other administrative and program costs attributable to the program, may not exceed 16% of the total amount expended through grants and contracts made under subsection (4). No additional administrative or other costs may be taken by the department on reverted funds used for future grant awards.

(ii) In fiscal year 2015 and in each succeeding fiscal year, the funds used by the department for administering the program, including but not limited to personal services costs, operating costs, and other administrative and program costs attributable to the program, may not exceed 12% of the total amount of grants and contracts awarded from the noxious weed management special revenue fund under subsection (4) in the previous fiscal year. No additional administrative or other costs may be taken by the department on reverted funds used for future grant awards.

(e) administrative expenses incurred by the noxious weed management advisory council;

(f) a project recommended by the noxious weed management advisory council, if the department determines that the project will significantly contribute to the management of noxious weeds within the state; and

(g) grants to the agricultural experiment station and the cooperative extension service for crop weed management research, evaluation, and education.

(6) The agricultural experiment station and cooperative extension service shall submit annual reports on current projects and future plans to the noxious weed management advisory council.

(7) In making expenditures under subsections (3) through (5), the department shall give preference to weed management districts and community groups.

(8) If the noxious weed management trust fund is terminated by constitutional amendment, the money in the fund must be divided between all counties according to rules adopted by the department for that purpose.

History: En. Sec. 5, Ch. 577, L. 1985; amd. Sec. 3, Ch. 639, L. 1987; amd. Sec. 76, Ch. 83, L. 1989; amd. Sec. 1, Ch. 440, L. 1991; amd. Sec. 4, Ch. 220, L. 1995; amd. Sec. 4, Ch. 493, L. 1999; amd. Sec. 221, Ch. 574, L. 2001; amd. Sec. 1, Ch. 106, L. 2003; amd. Sec. 125, Ch. 114, L. 2003; amd. Sec. 5, Ch. 472, L. 2005; amd. Sec. 12, Ch. 244, L. 2011; amd. Sec. 1, Ch. 326, L. 2013; amd. Sec. 1, Ch. 32, L. 2015.

80-7-815. Noxious weed emergency. (1) The governor may declare a noxious weed emergency if:

(a) a new and potentially harmful noxious weed is discovered growing in the state and is verified by the department; or

(b) the state is facing a potential influx of noxious weeds as the result of a natural disaster.

(2) In the absence of necessary funding from other sources, the principal of the noxious weed management trust fund may be appropriated as provided in 80-7-814 to government agencies for emergency relief to eradicate or confine the new noxious weed species or to protect the state from an influx of noxious weeds due to a natural disaster.

History: En. Sec. 6, Ch. 577, L. 1985; amd. Sec. 8, Ch. 588, L. 1991; amd. Sec. 5, Ch. 220, L. 1995; amd. Sec. 23, Ch. 407, L. 2001; amd. Sec. 222, Ch. 574, L. 2001; amd. Sec. 6, Ch. 472, L. 2005.

80-7-816. Account — deposit — investment. (1) There is a noxious weed account in the state special revenue fund established in 17-2-102. The interest from the noxious weed management trust fund and the funds directed to be deposited as provided in 80-7-823, excluding unrealized gains and losses, must be deposited in the account and must be expended as provided in 80-7-705 and 80-7-814.

(2) The department may direct the board of investments to invest the funds collected under subsection (1) pursuant to the provisions of 17-6-201. The income from the investments must be credited to the account in the state special revenue fund.

History: En. Sec. 6, Ch. 220, L. 1995; amd. Sec. 73, Ch. 7, L. 2001; amd. Sec. 24, Ch. 407, L. 2001; amd. Sec. 223, Ch. 574, L. 2001; amd. Sec. 2, Ch. 106, L. 2003.

Cross-References

State treasury fund structure, 17-2-102.

80-7-817 through 80-7-820 reserved.

80-7-821. Repealed. Sec. 10, Ch. 220, L. 1995.

History: En. Sec. 7, Ch. 577, L. 1985.

80-7-822. Terminated. Sec. 7, Ch. 493, L. 1999.

History: En. Sec. 5, Ch. 493, L. 1999.

80-7-823. Transfer of funds. There is transferred $100,000 annually from the highway nonrestricted account, provided for in 15-70-125, to the noxious weed state special revenue account, provided for in 80-7-816, for the purposes provided in 80-7-705.

History: En. Sec. 2, Ch. 407, L. 2001; amd. Sec. 8, Ch. 20, Sp. L. August 2002; amd. Sec. 13, Ch. 432, L. 2007.

Part 9
Noxious Weed Seed Free Forage Act

Part Cross-References

Control of weeds along roads and highways, 7-14-2132.
County weed control, Title 7, ch. 22, part 21.
Embargo, 7-22-2126.

80-7-901. Short title. This part may be cited as the "Noxious Weed Seed Free Forage Act".

History: En. Sec. 1, Ch. 521, L. 1995.

80-7-902. Findings — purpose. (1) The legislature finds that:

(a) natural resources of the state need to be protected from noxious weeds and their seeds;

(b) the movement of agricultural crops or commodities as livestock forage, bedding, mulch, and related materials, including pellets, cubes, and other processed livestock feeds with noxious weed seeds, causes new and expanding noxious weed infestations on private and government-managed lands, which adversely impact agricultural, forest, recreational, and other lands;

(c) it is necessary to develop and implement a state forage and product noxious weed seed free program in cooperation with federal, state, and local government, the university system, and private enterprise;

(d) an educational program is needed to inform all citizens of the importance of the incentive to market and handle forage that is free of noxious weed seeds;

(e) a cooperative forage and product distribution system with federal, state, local, and private land manager participation is needed to prevent increased noxious weed infestations;

(f) compliance standards involving the import or export of forage, in cooperation with county weed districts and the department, are needed; and

(g) to the extent there is a need for standards and good practices for other materials to prevent the spread of noxious weeds, seeds, and other invasive organisms, the department may create options for proof of compliance in a cost-effective manner to protect the state and to provide options for businesses.

(2) The purpose of this part is to promote incentives to benefit the people of this state and other states by producing and making available forage and other materials free of noxious weeds and their seeds.

History: En. Sec. 2, Ch. 521, L. 1995; amd. Sec. 2, Ch. 90, L. 2021.

80-7-903. Definitions. As used in this part, the following definitions apply:

(1) "Advisory council" means the Montana noxious weed management advisory council. Except as provided in 80-7-805, the council is subject to the provisions of 2-15-122.

(2) "Certification" means the state-approved and documented process of determining within a standard range of variances or tolerances that forage production fields are free of the seeds of noxious weeds, as defined in 7-22-2101, which process allows a person to sell the forage as noxious weed seed free and to attach approved certification identification.

(3) "Forage" means any crop, including alfalfa, grass, small grains, straw, and similar crops and commodities, that is grown, harvested, and sold for livestock forage, bedding material, or mulch or related uses and the byproducts of those crops or commodities that have been processed into pellets, cubes, or related products.

(4) "Noxious weed seed free" means that forage has an absence of noxious weed seeds within a standardized range of variances or tolerances established by department rule.

(5) "Person" means a natural person, individual, firm, partnership, association, corporation, company, joint-stock association, body politic, or organized group of persons, whether incorporated or not, and any trustee, receiver, assignee, or similar representative.

(6) "Producer" means a person engaged in growing forage, a tenant personally engaged in growing forage, or both the owner and the tenant jointly and includes a person, cooperative organization, trust, sharecropper, and any other business entity, devices, and arrangements that grow forage that is proposed to be certified as noxious weed seed free.

(7) "Sale" or "sell" means the selling, wholesaling, distributing, offering, exposing for sale, advertising, exchanging, brokering, bartering, or giving away by any person within this state of any forage as noxious weed seed free or certified or approved as noxious weed seed free.

History: En. Sec. 3, Ch. 521, L. 1995; amd. Sec. 25, Ch. 407, L. 2001; amd. Sec. 8, Ch. 92, L. 2019; amd. Sec. 2, Ch. 65, L. 2023.

80-7-904. Repealed. Sec. 4, Ch. 65, L. 2023.

History: En. Sec. 4, Ch. 521, L. 1995; amd. sec. 36, Ch. 308, L. 1995.

80-7-905. Powers and duties of department. The department may:

(1) provide for administration and enforcement of this part;

(2) enter into contracts and agreements;

(3) authorize the purchase of all office equipment or supplies and incur all other reasonable and necessary expenses and obligations that are required for administering the provisions of this part;

(4) become a member of and purchase membership in trade organizations and subscribe to and purchase trade bulletins, journals, and other trade publications;

(5) plan and conduct publicity and promotional campaigns to increase the incentives to use Montana forage that is free of noxious weed seed and to make publicity and promotional contracts and other agreements as necessary;

(6) establish certification standards and processes for forage and byproducts of forage and determine if processed forage byproducts are noxious weed seed free, based upon field of origin or verification that the production process has destroyed the viability of noxious weed seeds;

(7) establish fee assessments and accept other funds to make the certification program financially self-supporting;

(8) establish a standard range of variances or tolerances for noxious weed seeds in different forage subject to certification as noxious weed seed free, based upon scientific and operational considerations;

(9) administer rules and orders to be adopted for the exercise of its power and the performance of its duties, in accordance with Title 2, chapter 4;

(10) cooperate with any local, state, or national organization or agency, whether voluntary or created by the law of any state or the United States government, and enter into contracts or agreements with organizations or agencies for carrying on a joint campaign of research, education, product protection, publicity, reciprocity, and enforcement of this part;

(11) hire employees and designate authorized agents to conduct certification inspections, investigations, and sampling and to collect evidence of possible violations of this part; and

(12) accept grants, donations, and gifts from any source and expend those funds for any purpose consistent with this part, which may be specified as a condition of any grant, donation, or gift.

History: En. Sec. 5, Ch. 521, L. 1995.

80-7-906. Certification. (1) A person shall make an annual application to the department for certifying forage. The person shall comply with all certification standards and processes and pay any required fees prior to receiving certification approval and identification markers for the forage. If a production tonnage fee is established, the department may establish the method and time of payment.

(2) A person who wishes to deliver forage as noxious weed seed free into this state from out of state shall notify the department and pay any application fee or other appropriate fee, including an inspection fee, if required, prior to delivering the forage. The forage must be certified as noxious weed seed free from the state or province of origin if the department approves the certification through a reciprocal agreement or other process approved by the department. The department may waive some certification documentation or fees based upon the provisions in a reciprocal agreement.

History: En. Sec. 6, Ch. 521, L. 1995.

80-7-907. Fees. (1) The department, with the advice of the advisory council, may establish fees to support the cost of administering the noxious weed seed free forage program. Fees may be established for:

(a) processing applications;
(b) per acre inspection of forage;
(c) inspection of facilities;
(d) minimum administration;
(e) inspection related to processing or manufacturing forage into pellets, cubes, and related products;
(f) certification identification markers;
(g) mileage and per diem; and
(h) import inspection.

(2) Fees, structures, and procedures must be recommended to the department by the advisory council.

History: En. Sec. 7, Ch. 521, L. 1995.

80-7-908. Deposit and disbursement of funds — records — investment. (1) There is a state noxious weed forage account in the state special revenue account. All funds received by the department from fees or penalties collected or received under 80-7-905 through 80-7-907, 80-7-921, and 80-7-922(1) and all other related funds received must be deposited in the state noxious weed forage account.

(2) The department may by contract allow for the collection of fees authorized under 80-7-907. A portion of the fees collected may be retained by the collector, and the portion of the fees assigned to the department must be submitted to the department. The contract must require:

(a) a record of the name of the person collecting fees;
(b) a record of fees collected;
(c) a record of the amounts submitted to the department;
(d) a record of the amount retained by the collector; and
(e) that all records be kept in accordance with generally accepted accounting principles.

(3) Funds received under 80-7-905 through 80-7-907, 80-7-921, and 80-7-922(1) that are not immediately required for the purposes of this part must be invested under provisions of the unified investment program established in Title 17, chapter 6, part 2. The income from the investments must be deposited in the state special revenue fund and credited to the department.

(4) Funds received pursuant to this part are available for appropriation to the department for the administration of the noxious weed seed free forage program and for the purposes of this part.

History: En. Sec. 8, Ch. 521, L. 1995; amd. Sec. 15, Ch. 10, L. 2009.

80-7-909. Rules. The department may, with the advice of the advisory council appointed under 80-7-805, adopt rules necessary to carry out its responsibilities under this part in accordance with Title 2, chapter 4. The rules may include but are not limited to:

(1) contracts and agreements;
(2) certification standards, processing, and sampling and equipment standards and operation;
(3) inspections and investigation procedures and standards;
(4) operations;
(5) records;

(6) application, inspection, production, import, certification identification, mileage, and per diem fees and their collection;

(7) reciprocal agreements with other states or Canadian provinces; and

(8) penalties, stop sales, condemnation, and other orders.

History: En. Sec. 9, Ch. 521, L. 1995; amd. Sec. 3, Ch. 65, L. 2023.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

80-7-910. Investigation and enforcement authority. (1) In enforcing the provisions of this part, the department or its authorized agents, upon reasonable cause, may enter any private or public premises, property, or vehicle with a warrant or with the consent of the inhabitant or owner to inspect, sample, or investigate at reasonable times forage subject to certification or sale as certified forage or as free of noxious weed seeds.

(2) All enforcement actions and orders must be made under the contested case provisions of Title 2, chapter 4, part 6.

History: En. Sec. 10, Ch. 521, L. 1995.

Cross-References

Search and seizure, Art. II, sec. 11, Mont. Const.

80-7-911. Stop sale, use, or removal order. When the department has reasonable cause to believe that a person is selling, distributing, storing, transporting, or using forage in violation of any of the provisions of this part, a written stop sale, use, or removal order may be issued to that person. If the person is not available for service of the order, the department may attach the order to the forage and notify the person. The forage may not be sold, used, or removed until compliance with the provisions of this part is achieved. The department may release the order once compliance is achieved. The department may require that the forage be sold or used only as an uncertified forage or delivered back to the seller, or the department may order condemnation of any forage that does not meet the requirement of this part or other alternatives established by rule. The department, upon finding that the person responsible for the embargoed forage has failed to comply with the order in any respect, may petition the district court of the first judicial district for enforcement of the order.

History: En. Sec. 11, Ch. 521, L. 1995.

80-7-912. Prohibited acts. (1) It is unlawful for a person to certify or sell as certified or as noxious weed seed free any forage as free of noxious weed seed within this state, unless the forage is identified under a department-approved process as "Montana certified" and the forage meets all the requirements of this part. A person may not designate forage as certified or use any other title, designation, words, letters, abbreviations, sign, card, or identifier tending to indicate that the forage is certified unless the forage meets all the requirements of this part.

(2) Forage certified under a reciprocal agreement between the department and another state or Canadian province and identified according to approved certification standards to be shipped into the state or shipped to another state or province must meet the requirements of this part.

(3) All forage products used by public utilities and local, county, state, or federal agencies, including but not limited to mulches, bedding materials, and erosion control barriers, must be certified as noxious weed seed free. All seeds used for reclamation purposes by public utilities and local, county, state, or federal agencies must be free of noxious weed seeds and be certified seed according to Title 80, chapter 5.

History: En. Sec. 12, Ch. 521, L. 1995.

80-7-913. Creation of certification programs — other materials. (1) The department may by rule establish certification programs for materials other than forage. Certification may include but is not limited to:

(a) noxious weed free;

(b) noxious weed and seed free; or

(c) invasive organism free.

(2) Programs established in accordance with subsection (1) must be paid for using fees or donations and may not be mandated by the department.

(3) All fees, materials, and standards for programs established in accordance with this section must be included in rules established in accordance with subsection (1).

(4) A person who falsely claims a certification created under this section is subject to penalties under 80-7-922.

(5) To assist in implementation of a program, the department may enter into agreements with counties, the Montana state university extension service, other states, federal agencies, or other parties.

History: En. Sec. 1, Ch. 90, L. 2021.

80-7-914 through 80-7-920 reserved.

80-7-921. Penalty for nonpayment of fees. In addition to the penalties set out in 80-7-922, a person who fails to pay or improperly pays any fee assessment or fee assessed under the provisions of this part is subject to a penalty of $100 or double the assessment, whichever is greater, including the original fee. The penalty must be paid to the department and deposited as provided in 80-7-908. A certification issued to a person who fails to pay or improperly pays any fee assessment or fee assessed under the provisions of this part is invalid until the original fee and penalty are paid to the department.

History: En. Sec. 13, Ch. 521, L. 1995.

80-7-922. Penalties. A person who violates or aids in a violation of any of the provisions of this part or any rules or orders of the department adopted under this part is subject to the following penalties:

(1) a civil penalty of not more than $1,000 for each offense. Assessment of a civil penalty by the department may be made in conjunction with any other warning, order, or administrative action authorized by this part that is issued by the department.

(2) a misdemeanor penalty of not less than $100 or more than $1,500 or up to 6 months' imprisonment, or both, if the person is convicted in district court.

History: En. Sec. 14, Ch. 521, L. 1995.

80-7-923. Injunction authorized. The department may commence a civil action in the district court of the first judicial district seeking appropriate relief, including a permanent or temporary injunction, for a violation of this part.

History: En. Sec. 15, Ch. 521, L. 1995.

Cross-References

Injunctions, Title 27, ch. 19.

80-7-924. Embargo. Upon receiving a report from a district weed board, as provided in 7-22-2126, that forage is subject to embargo and upon verification of a violation of this part, the department shall enforce the embargo throughout the state and issue appropriate stop sale orders as provided in 80-7-911.

History: En. Sec. 16, Ch. 521, L. 1995.

Part 10
Aquatic Invasive Species

80-7-1001. Short title. This part may be cited as the "Montana Aquatic Invasive Species Act".

History: En. Sec. 1, Ch. 429, L. 2009.

80-7-1002. Legislative findings and purpose. (1) The legislature finds that:

(a) invasive species can wreak damage on the economy, environment, recreational opportunities, and human health in Montana;

(b) there is reason to be concerned about the further introduction, importation, and infestation of Eurasian watermilfoil (Myriophyllum spicatum) and the introduction, importation, and infestation of additional invasive species in Montana, such as the zebra mussel (Dreissena polymorpha) and the quagga mussel (Dreissena bugensis), that could cause catastrophic damage to not only our waterways, rivers, and lakes, our water storage, delivery, and irrigation systems, our hydroelectric power structures and systems, and our aquatic ecosystems, but also to the entire state economy;

(c) as infestations of threatening invasive species move ever closer to Montana's borders, protecting Montana against these species is of utmost importance to the state economy, environment, recreational opportunities, and human health for the benefit of all Montanans;

(d) preventing the introduction, importation, and infestation of invasive species is the most effective and least costly strategy for combating invasive species that, once established, are often difficult to control or eradicate;

(e) the use of check stations, at which vessels and equipment may be inspected for the presence of invasive species and cleaned if an invasive species is detected, is an effective way to prevent the introduction, importation, and infestation of invasive species that are easily transferred from infested areas to uninfested areas when proper precautions are not taken; and

(f) preventing the introduction, importation, and infestation of invasive species is best accomplished through coordinated educational and management activities.

(2) The purpose of this part is to establish a mechanism for Montana to take concerted action to detect, control, and manage invasive species, including preventing further introduction, importation, and infestation, by educating the public about the threat of these species, coordinating public and private efforts and expertise to combat these species, and authorizing the use of check stations to prevent the movement of invasive species from infested areas to uninfested areas to protect the state's economy, environment, recreational opportunities, and human health for the benefit of all Montanans.

History: En. Sec. 2, Ch. 429, L. 2009; amd. Sec. 1, Ch. 378, L. 2011; amd. Sec. 2, Ch. 354, L. 2013.

80-7-1003. Definitions. As used in this part, the following definitions apply:

(1) "Departments" means the department of agriculture, the department of fish, wildlife, and parks, the department of natural resources and conservation, and the department of transportation.

(2) "Drain plug" means a valve or device used to control the drainage of water from a compartment designed to hold water, such as a bilge, livewell, or ballast tank. The term does not include a permanently sealed device, like those used to prevent water from filling a pontoon, unless the compartment the device is permanently sealed to is compromised and contains water.

(3) "Equipment" means an implement or machinery that has been wholly or partially immersed in surface waters, including but not limited to boat lifts, trailers transporting vessels, floating docks, pilings, dredge pipes, and buoys.

(4) "Invasive species" means, upon the mutual agreement of the directors of the departments, a nonnative, aquatic species that has caused, is causing, or is likely to cause harm to the economy, environment, recreational opportunities, or human health.

(5) "Invasive species management area" means a designation made by a department under 80-7-1008 for a specific area or for a body or bodies of water for a specific or indeterminate amount of time that regulates invasive species or potential carriers of invasive species within the boundaries of that area.

(6) "Person" means an individual, partnership, corporation, association, limited partnership, limited liability company, governmental subdivision, agency, or public or private organization of any character.

(7) "Tributaries to the Columbia River" means all water bodies in Montana from which water drains into the Columbia River.

(8) "Vessel" has the meaning provided in 61-1-101.

History: En. Sec. 3, Ch. 429, L. 2009; amd. Sec. 2, Ch. 378, L. 2011; amd. Sec. 3, Ch. 354, L. 2013; amd. Sec. 8, Ch. 348, L. 2017; amd. Sec. 1, Ch. 192, L. 2021.

80-7-1004. Invasive species account. (1) There is an invasive species account in the state special revenue fund. The account is administered by the department of fish, wildlife, and parks.

(2) Money transferred from any lawful source, including but not limited to fees collected pursuant to 15-65-121, 15-72-601, and 23-2-541, and gifts, grants, donations, securities, or other assets, public or private, may be deposited in the account.

(3) Subject to subsection (4), money deposited in the account must be used for projects that prevent or control any nonnative, aquatic invasive species pursuant to this part.

(4) Any private contribution deposited in the account for a particular purpose, as stated by the donor, must be used exclusively for that purpose.

(5) At the end of each fiscal year, unreserved funds in the account, including any interest and earnings, must be transferred to the invasive species trust fund established in 80-7-1016.

(6) The department of fish, wildlife, and parks may recover not more than 5% in indirect costs from the invasive species account.

History: En. Sec. 4, Ch. 429, L. 2009; amd. Sec. 4, Ch. 354, L. 2013; amd. Secs. 6, 7, Ch. 387, L. 2017; amd. Secs. 5, 6, 7, Ch. 356, L. 2019.

80-7-1005. Cooperative agreement for invasive species detection and control. (1) In order to implement, administer, and accomplish the purposes of this part, the departments, collectively or individually, shall enter into a cooperative agreement with each other or may enter into an agreement with any person with the appropriate expertise and administrative capacity to perform the obligations of the agreement.

(2) Prior to entering an agreement with a person other than a department, the departments shall work in collaboration with each other to coordinate their respective responsibilities in order to further the purposes of this part.

(3) A cooperative agreement may include provisions for funding to implement the agreement.

History: En. Sec. 5, Ch. 429, L. 2009; amd. Sec. 3, Ch. 378, L. 2011.

80-7-1006. Departmental responsibilities — reporting. (1) The departments shall prepare a list of invasive species and identify those departments and other public agencies with jurisdiction over each species on the list. The jurisdiction of each department for the prevention and control of invasive species is according to the department's powers and duties as established by law.

(2) For those invasive species under the jurisdiction of more than one department, the departments with jurisdiction, through cooperative agreement, shall seek to clarify and coordinate their respective responsibilities.

(3) Working in collaboration with each other, the departments, individually or collectively, shall develop and adopt an invasive species strategic plan or plans to accomplish the purposes of this part. The plan or plans shall identify and prioritize threats and determine appropriate actions, in the following order of priority, related to:

(a) public awareness and education;

(b) prevention and detection of invasive species, including the use of invasive species management areas authorized under 80-7-1008 and the statewide invasive species management area established in 80-7-1015;

(c) management, control, and restoration of infested areas; and

(d) emergency response.

(4) The departments shall enforce quarantine regulations and measures imposed by law or rule in an invasive species management area established under 80-7-1008 and in the statewide invasive species management area established in 80-7-1015, including the mandatory inspection or decontamination of any interior portion of a vessel or equipment that may contain water for the presence of an invasive species.

(5) The departments may designate employees to carry out the provisions of this part.

(6) The department of fish, wildlife, and parks shall authorize a request by another entity to operate a check station pursuant to this part if the entity agrees to the conditions of an agreement established by all parties, any cooperative funding requirements, and rules adopted under this part. The department of fish, wildlife, and parks retains oversight authority over the operation of a check station pursuant to this subsection.

(7) The departments shall implement education and outreach programs that increase public knowledge and understanding of prevention, early detection, and control of invasive species.

(8) (a) The departments of fish, wildlife, and parks and natural resources and conservation shall report to the environmental quality council at least biennially in accordance with 5-11-210 regarding activities undertaken and expenses incurred in the implementation of this part.

(b) The department of fish, wildlife, and parks shall report to the legislative finance committee at least biennially on expenditures made in the implementation of this part. Expenditures, if not provided in accordance with subsection (8)(a), must be provided to the legislature in accordance with 5-11-210.

History: En. Sec. 6, Ch. 429, L. 2009; amd. Sec. 4, Ch. 378, L. 2011; amd. Sec. 5, Ch. 354, L. 2013; amd. Sec. 1, Ch. 290, L. 2015; amd. Sec. 8, Ch. 387, L. 2017; amd. Sec. 2, Ch. 472, L. 2019; amd. Sec. 109, Ch. 261, L. 2021.

80-7-1007. Rulemaking authority. (1) Unless otherwise provided in Title 81, chapters 2 and 7, or this chapter, each of the departments may adopt rules for the prevention, early detection, and control of invasive species under the departments' jurisdiction, including rules for the:

(a) implementation of the invasive species strategic plan adopted pursuant to 80-7-1006;

(b) transportation of an invasive species or any agent likely to be a carrier of an invasive species;

(c) designation, regulation, and treatment of an invasive species management area under 80-7-1008, including rules pertaining to:

(i) the use of quarantine regulations and measures;

(ii) the movement of vessels and equipment within, to, or from the area; and

(iii) the inspection and cleaning of vessels and equipment moving within, to, or from the area;

(d) manner in which vessels and equipment, including bilges, livewells, bait containers, and other boating-related equipment, traveling in the state must be cleaned to ensure that they are free from the presence of an invasive species; and

(e) prohibition on the use of felt-soled waders.

(2) The departments shall adopt rules for the administration of the statewide invasive species management area established in 80-7-1015, including rules specifying the method or methods for preventing the introduction or further introduction of invasive species into the state, and shall adopt rules for:

(a) the use of quarantine measures;

(b) the movement of vessels and equipment into the state; and

(c) the manner in which check stations will be used to inspect, clean, and decontaminate vessels and equipment moving into the state.

History: En. Sec. 7, Ch. 429, L. 2009; amd. Sec. 5, Ch. 378, L. 2011; amd. Sec. 6, Ch. 354, L. 2013; amd. Sec. 22, Ch. 275, L. 2017; amd. Sec. 9, Ch. 348, L. 2017.

80-7-1008. Invasive species management area — authorization. (1) Except as provided in 80-7-1015, when an invasive species is identified as infesting or threatening an area, the department with jurisdiction over that invasive species may designate and administer an invasive species management area for a specific area of land or for a body or bodies of water for a specific or indeterminate amount of time to prevent and control the infestation or spread of that invasive species.

(2) To the extent practicable, prior to the designation of an invasive species management area, the department making the designation shall coordinate with all of the departments in order to further the purposes of this part.

(3) The designation of an invasive species management area must specify:

(a) the invasive species present or considered threatening; and

(b) the method or methods for preventing the introduction of the species or controlling or eradicating the species, including regulations pertaining to:

(i) the use of quarantine measures;

(ii) the movement of vessels and equipment within, to, and from the area; and

(iii) whether check stations will be used to inspect and clean vessels and equipment moving within, to, or from the area. Mandatory inspections of any interior portion of a vessel or equipment that may contain water may occur only if the use of mandatory inspections is included as part of quarantine measures established pursuant to subsection (3)(b)(i).

(4) As far as practical, signs indicating that an invasive species management area is in place must be posted in an effective manner at access points to the designated area and along the boundaries and within the area. The signs must include information about the specific regulations that apply to the area. The signs must be paid for with funds from the invasive species account established in 80-7-1004. The departments may coordinate with any other governmental entity for the posting of signs.

History: En. Sec. 8, Ch. 429, L. 2009; amd. Sec. 6, Ch. 378, L. 2011; amd. Sec. 7, Ch. 354, L. 2013; amd. Sec. 10, Ch. 348, L. 2017.

80-7-1009. Arrangements with landowners. (1) The department designating an invasive species management area pursuant to 80-7-1008 shall work cooperatively with any affected land managers and landowners within the boundaries of the designated area to establish prevention, treatment, control, and eradication methods best suited for the invasive species infesting or threatening the area.

(2) If negotiations with a land manager or landowner fail, the designating department may arrange for the prevention, treatment, control, and eradication of the designated species as it relates to water infrastructure, including but not limited to hydroelectric, municipal, recreational, and irrigation equipment, without the consent of the land manager or landowner. To the extent possible, the arrangements by the department must be made in a manner best suited to preventing, treating, controlling, and eradicating the invasive species, while minimizing disturbances and adverse impacts to the landowner.

History: En. Sec. 9, Ch. 429, L. 2009.

80-7-1010. Invasive species management area — regulation. (1) The owner, operator, or person in possession of any vessel or equipment authorized for use in an invasive species management area shall comply with any regulations imposed pursuant to 80-7-1008(3)(b) and provide proof of compliance upon request of a department or its designee.

(2) After use in a body of water within an invasive species management area, all vessels, equipment, bait containers, livewells, bilges, and other boating-related equipment, excluding marine sanitary systems, must be drained in a way that does not impact any state waters and the drain plug disengaged to drain the water before leaving the boat launch or parking area and being transported on land or a public highway, as defined in 61-1-101, except where allowed by the department of fish, wildlife, and parks. After draining the water, the drain plug may be reengaged. If a drain plug does not exist or a drain plug cannot be disengaged to comply with this subsection, reasonable measures must be taken to dry or drain all compartments or spaces that hold water.

History: En. Sec. 10, Ch. 429, L. 2009; amd. Sec. 8, Ch. 354, L. 2013; amd. Sec. 9, Ch. 387, L. 2017; amd. Sec. 2, Ch. 192, L. 2021.

80-7-1011. Check stations. (1) The departments shall establish a check station within or adjacent to an invasive species management area to prevent the introduction, importation, infestation, and spread of the invasive species for which the designation was issued.

(2) At a check station established under subsection (1), the departments may examine vessels and equipment for the presence of an invasive species and compliance with regulations imposed under 80-7-1008(3)(b) and with this section. Examination of any interior portion of a vessel or equipment that may contain water, including bilges, livewells, and bait containers, for compliance may occur only if inspection of interior portions is included as part of quarantine measures established pursuant to 80-7-1008(3)(b)(i).

(3) The owner, operator, or person in possession of a vessel or equipment shall stop at any check station unless a medical emergency makes stopping likely to result in death or serious bodily injury.

(4) If during an inspection of a vessel or equipment the presence of an invasive species is detected, that vessel or equipment may not leave the check station without authorization until it is cleaned and decontaminated in a manner established in accordance with 80-7-1008(3)(b). Every effort must be made to ensure decontamination of the vessel or equipment as expeditiously as possible.

History: En. Sec. 11, Ch. 429, L. 2009; amd. Sec. 7, Ch. 378, L. 2011; amd. Sec. 9, Ch. 354, L. 2013; amd. Sec. 11, Ch. 348, L. 2017.

80-7-1012. Invasive species possession and transfer prohibited — exceptions. (1) Except as provided in subsection (2), a person may not import, purchase, sell, barter, distribute, propagate, transport, introduce, or possess an invasive species except:

(a) when transporting a specimen to any of the departments or another destination as directed by any of the departments in a sealed container for the purpose of containing, identifying, or reporting the presence of the species or for an approved educational purpose;

(b) when done by a government agency for an approved purpose;

(c) with a proper permit issued by the state or federal government; or

(d) as allowed by rule.

(2) A person who learns of the presence of an invasive species on that person's vessel or property shall notify the department with primary jurisdiction of the species immediately. If the person complies with department requirements for the treatment, control, and eradication of the invasive species, the person must be considered to be in compliance with this section and is not subject to penalties under 80-7-1014. This subsection does not apply to a person who purposely or knowingly introduces or attempts to introduce an invasive species in Montana.

History: En. Sec. 12, Ch. 429, L. 2009.

80-7-1013. Emergency response. (1) The governor may declare an invasive species emergency if:

(a) the introduction or spread of an invasive species has occurred or is imminent;

(b) a new and potentially harmful invasive species is discovered in the state and is verified by the departments; or

(c) the state is facing a potential influx of invasive species as the result of a natural disaster.

(2) If an emergency is declared pursuant to subsection (1), the governor may authorize the expenditure of funds pursuant to 10-3-312.

(3) In the absence of necessary funding from other sources, the principal of the invasive species trust fund established in 80-7-1016 may be appropriated by a vote of three-fourths of the members of each house of the legislature to government agencies for emergency relief to eradicate or confine the new invasive species or to protect the state from an influx of invasive species due to a natural disaster.

History: En. Sec. 13, Ch. 429, L. 2009; amd. Sec. 4, Ch. 289, L. 2015.

80-7-1014. Penalty. (1) Except as provided in subsection (2), the following penalties apply:

(a) The offense of negligently violating the provisions of 80-7-1010 through 80-7-1012 and 80-7-1015 or rules adopted under 80-7-1010 through 80-7-1012 and 80-7-1015 pertaining to an invasive species management area or the statewide invasive species management area is a misdemeanor punishable by a fine not to exceed $700 for the first offense and $1,400 for subsequent offenses.

(b) The offense of purposely or knowingly violating the provisions of 80-7-1010 through 80-7-1012 and 80-7-1015 or rules adopted under 80-7-1010 through 80-7-1012 and 80-7-1015 pertaining to an invasive species management area or the statewide invasive species management area is a misdemeanor punishable by a fine not to exceed $1,950. In addition, the person shall forfeit the following as issued by this state:

(i) any current fishing license and the privilege to fish in this state for a period of time set by the court; and

(ii) any current sticker or decal required under this part to operate a vessel on the waters of this state.

(c) Purposely or knowingly attempting to introduce an invasive species in Montana is a felony. Any person found guilty under this subsection (1)(c) is subject to a criminal penalty of up to 2 years in prison, a fine not to exceed $25,000, or both. A person convicted of violating this subsection (1)(c) may also be required to surrender an involved vessel and pay restitution for any cost incurred to mitigate the effect of the violation.

(d) A civil penalty not to exceed $2,500 may be imposed on any person who violates any other provision of 80-7-1010 through 80-7-1012 and 80-7-1015 or rules adopted under 80-7-1010 through 80-7-1012 and 80-7-1015 not enumerated in subsections (1)(a) through (1)(c).

(2) A warning without penalty may be issued to any person violating the provisions of 80-7-1010 through 80-7-1012 and 80-7-1015 or rules adopted under 80-7-1010 through 80-7-1012 and 80-7-1015 if it is determined that a warning best serves the public interest.

(3) No penalty may be issued to any person violating the provisions of 80-7-1011 if clear and adequate signage is not posted a reasonable distance from the check station.

(4) Civil penalties collected under this section must be deposited in the general fund.

History: En. Sec. 14, Ch. 429, L. 2009; amd. Sec. 10, Ch. 354, L. 2013; amd. Sec. 12, Ch. 348, L. 2017; amd. Sec. 1, Ch. 430, L. 2025.

Compiler's Comments
2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 430, L. 2025. Amendment effective October 1, 2025.

80-7-1015. Statewide invasive species management area. (1) There is established a statewide invasive species management area for the purpose of preventing the introduction, importation, and infestation of invasive species through the mandatory inspection of vessels and equipment entering the state and, except as provided in 80-7-1030, the mandatory decontamination of any vessel or equipment on or in which an invasive species is detected.

(2) To the greatest extent possible, the department of transportation shall cooperate with the department of fish, wildlife, and parks to utilize ports of entry or adjacent department of transportation facilities as locations for check stations established pursuant to this section.

(3) As far as practical, signs indicating that the statewide invasive species management area is in place must be posted in an effective manner along the boundaries of and within the state. The signs must include information about the specific regulations that apply to the area. The signs must be paid for with funds from the invasive species account established in 80-7-1004. The departments may coordinate with any other governmental entity for the posting of signs.

(4) At a check station established pursuant to this section, the departments may examine vessels and equipment for the presence of an invasive species and compliance with this section and rules adopted pursuant to 80-7-1007. Except as provided in 80-7-1030, examination of any interior portion of a vessel or equipment that may contain water, including bilges, livewells, and bait containers, for compliance may occur only if inspection of interior portions is included as part of quarantine measures established pursuant to rules adopted under 80-7-1007.

(5) The owner, operator, or person in possession of a vessel or equipment shall:

(a) comply with this section and rules imposed under 80-7-1007; and

(b) stop at any check station established pursuant to this section unless a medical emergency makes stopping likely to result in death or serious bodily injury.

(6) Except as provided in 80-7-1030, if during an inspection of a vessel or equipment the presence of an invasive species is detected, that vessel or equipment may not leave the check station without authorization until it is cleaned and decontaminated in a manner established in accordance with rules adopted pursuant to 80-7-1007. Every effort must be made to ensure decontamination of the vessel or equipment as expeditiously as possible.

(7) After use in a body of water within the statewide invasive species management area, all vessels, equipment, bait containers, livewells, bilges, and other boating-related equipment, excluding marine sanitary systems, must be drained in a way that does not impact any state waters and the drain plug disengaged to drain the water before leaving the boat launch or parking area and being transported on land or on a public highway, as defined in 61-1-101, except when allowed by the department of fish, wildlife, and parks. After draining the water, the drain plug may be reengaged. If a drain plug does not exist or a drain plug cannot be disengaged to comply with this subsection, reasonable measures must be taken to dry or drain all compartments or spaces that hold water.

History: **En. Sec. 1, Ch. 354, L. 2013; amd. Sec. 2, Ch. 290, L. 2015; amd. Sec. 13, Ch. 348, L. 2017; amd. Sec. 3, Ch. 472, L. 2019; amd. Sec. 3, Ch. 192, L. 2021.**

80-7-1016. Invasive species trust fund. (1) There is an invasive species trust fund. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

(2) The principal of the invasive species trust fund shall forever remain inviolate in an amount of $100 million unless appropriated by a vote of three-fourths of the members of each house of the legislature.

(3) Except as provided in 80-7-1013 and subsection (2) of this section, money deposited in the invasive species trust fund may not be appropriated until the principal reaches $100 million.

(4) By August 15 of each fiscal year, the principal of the invasive species trust fund in excess of $100 million and the interest and income generated from the trust fund, excluding unrealized gains and losses, must be deposited in the invasive species account established in 80-7-1004.

(5) Deposits to the principal of the trust fund may include but are not limited to grants, gifts, transfers, bequests, or donations from any source.

History: En. Sec. 1, Ch. 289, L. 2015; amd. Sec. 10, Ch. 387, L. 2017; amd. Sec. 3, Ch. 119, L. 2023.

80-7-1017. Invasive species grant account. (1) There is an invasive species grant account in the state special revenue fund established in 17-2-102. Subject to appropriation by the legislature, money deposited in the account must be used pursuant to 80-7-1018 and this section.

(2) Deposits to the account may include but are not limited to grants, gifts, transfers, bequests, donations, and appropriations from any source.

(3) Interest and income earned on the account and any unspent or unencumbered money in the account at the end of a fiscal year must remain in the account.

(4) Money deposited in the account may be used for costs incurred by the department of natural resources and conservation to administer the provisions of 80-7-1018. Except for startup costs incurred in the first year of the program, the administrative costs in any fiscal year, including but not limited to personal services and operations, may not exceed 10% of the total amount of grants and contracts awarded pursuant to 80-7-1018 in the previous fiscal year.

History: En. Sec. 2, Ch. 289, L. 2015; amd. Sec. 11, Ch. 387, L. 2017.

80-7-1018. Invasive species grant program — criteria — rulemaking. (1) Money deposited in the invasive species grant account established in 80-7-1017 may be expended by the department of natural resources and conservation through grants to or contracts with communities or local, state, tribal, or other entities for invasive species management.

(2) For the purposes of this section, the term "invasive species management" includes public education and planning, development, implementation, or continuation of a program or project to prevent, research, detect, control, or, where possible, eradicate invasive species.

(3) A grant or contract may be awarded under this section for demonstration of and research and public education on new and innovative invasive species management.

(4) In making grant and contract awards under this section, the department of natural resources and conservation shall give preference to local governments, collaborative stakeholders, and community groups that it determines can most effectively implement programs on the ground.

(5) If the governor appoints an advisory council on invasive species, the department of natural resources and conservation shall consider recommendations by the advisory council for awards made under this section.

(6) The department of natural resources and conservation is not eligible to receive grants and contracts under this section.

(7) The department of natural resources and conservation may accept federal funds for use pursuant to this section.

(8) Any funds awarded under this section, regardless of when they were awarded, that are not fully expended upon termination of a contract or an extension of a contract, not to exceed 1 year, must revert to the department of natural resources and conservation and be deposited in the invasive species grant account established in 80-7-1017. The department of natural resources and conservation shall use any reverted funds to make future awards pursuant to this section.

(9) The department of natural resources and conservation may adopt rules to administer the provisions of this section.

History: En. Sec. 3, Ch. 289, L. 2015; amd. Sec. 12, Ch. 387, L. 2017.

80-7-1019. Enforcement. (1) Except as provided in subsection (2), a peace officer, as defined in 45-2-101, may:

(a) stop the driver of a vehicle transporting a vessel or equipment on receiving a complaint or observing that the driver failed to stop at a check station as required under this part;

(b) upon particularized suspicion that a vessel or equipment is infested with an invasive species, require the driver of a vehicle transporting a vessel or equipment to submit the vessel or equipment to an inspection. The peace officer may conduct mandatory inspections of any interior portion of a vessel or equipment that may contain water for compliance with this part and rules adopted under this part only if:

(i) the peace officer obtains a search warrant, as defined in 46-1-202; or

(ii) the vessel or equipment is physically located within the boundaries of an invasive species management area established under 80-7-1008 or the statewide invasive species management area established in 80-7-1015 and use of mandatory inspections has been included in quarantine measures established pursuant to 80-7-1008(3)(b)(i) or rules adopted under 80-7-1007.

(c) cite a person for a violation of this part.

(2) (a) A peace officer may not require a driver who may be in violation of the requirements of 80-7-1010(2) and 80-7-1015(7) to stop except on reasonable cause to believe:

(i) that the driver violated a traffic regulation or another provision of this part; or

(ii) that the driver's vehicle is unsafe or not equipped as required by law.

(b) A driver found to be in violation of 80-7-1010(2) or 80-7-1015(7) may correct the violation in the presence of the officer and be deemed in compliance. A correction made pursuant to this subsection (2)(b) may not impact any state waters.

History: En. Sec. 3, Ch. 290, L. 2015; amd. Sec. 4, Ch. 192, L. 2021.

80-7-1020 through 80-7-1024 reserved.

80-7-1025. Missouri River containment and quarantine program. (1) The department of fish, wildlife, and parks shall operate a containment and quarantine program for water bodies fouled by invasive mussels in the Missouri River system, including but not limited to:

(a) restrictions on moored vessels within the system;

(b) restrictions regarding the use of launch sites and the exit of vessels from fouled water bodies in the system. Launching in and exiting from fouled water bodies is restricted to vessels certified by the department of fish, wildlife, and parks for local use on those water bodies unless check stations and decontamination units are present.

(c) restrictions on fishing derbies in fouled water bodies.

(2) By December 31, 2018, the department of fish, wildlife, and parks shall develop a containment and quarantine plan for the Missouri River system, allowing for public input and comment, and submit the plan to the invasive species council established in 2-15-3309. The plan may permit the reopening of fouled water bodies in the system to all vessels if launch site inspectors are properly trained, if the necessary infrastructure and equipment are in place and have been fully tested in advance of deployment, and if invasive species are fully contained, after decontamination, to the source water body.

History: En. Sec. 5, Ch. 348, L. 2017.

80-7-1026. Repealed. Sec. 9, Ch. 428, L. 2023.

History: En. Sec. 6, Ch. 348, L. 2017; amd. Sec. 110, Ch. 261, L. 2021.

80-7-1027. Terminated. Sec. 18, Ch. 348, L. 2017.

History: En. Sec. 7, Ch. 348, L. 2017.

80-7-1028 and 80-7-1029 reserved.

80-7-1030. Mandatory decontamination for vessels with ballast or bladders — legislative finding — fees. (1) Except as provided in subsection (2) and in recognition that any interior portion of a vessel that may contain or retain water presents a significant risk of transporting and spreading invasive species, the legislature finds that as part of quarantine measures implemented in the statewide invasive species management area established pursuant to 80-7-1015, a vessel with ballast or bladders must be decontaminated upon entering the state or crossing the continental divide into the Columbia River basin if the vessel is to be launched on waters of this state.

(2) Decontamination of a vessel with ballast or bladders is not required when the operator is able to provide proof that the vessel has not been launched in any water body for the preceding 45 days or meets other criteria determined by the department of fish, wildlife, and parks to render decontamination unnecessary. The department shall establish, in writing, the standards for proof.

(3) Decontamination shall be performed in accordance with rules adopted pursuant to 80-7-1007.

(4) The department of fish, wildlife, and parks may certify private entities, tribes, and conservation districts to conduct decontamination pursuant to this section. If it does so, the department shall establish certification procedures, including a decontamination training course and requirements for maintaining certification.

(5) A fee of $50 may be charged per vessel decontaminated by the department pursuant to this section. A private entity, tribe, or conservation district certified to decontaminate a vessel with ballast or bladders may charge a fee commensurate with the actual cost of the decontamination.

(6) A vessel with ballast or bladders that cannot be fully decontaminated must be locked to its trailer to prevent launch for a drying period determined by the department of fish, wildlife, and parks. The vessel may not be unlocked and allowed to launch until the drying time is complete. No one other than authorized department staff may remove the lock during the drying time. If a vessel requires a drying period, then the vessel must pass an inspection prior to launching in Montana waters in order to be considered decontaminated.

(7) A person in possession of a vessel with ballast or bladders shall carry proof of compliance with this section and provide it for inspection upon request of a department or its designee.

History: En. Sec. 1, Ch. 472, L. 2019; amd. Sec. 1, Ch. 125, L. 2021.

80-7-1031. Exemption from environmental review. The department of natural resources and conservation is exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when authorizing grants, loans, or bonds related to conservation, reclamation, and renewable resource activities pursuant to this part.

History: En. Sec. 2, Ch. 116, L. 2023.

Part 11
Vertebrate Pest Management

80-7-1101. Department to operate vertebrate pest management program. (1) The department may establish and operate organized and systematic programs for the management and suppression of vertebrate pests. Vertebrate pests are defined as jackrabbits, prairie dogs, ground squirrels, pocket gophers, rats, mice, skunks, raccoons, bats, snakes, voles, and depredatory and nuisance birds. Depredatory and nuisance birds are defined as blackbirds, cowbirds, starlings, house sparrows, and feral pigeons, when they are injurious to agriculture, other industries, and the public. For this purpose, the department may enter into written agreements with appropriate federal agencies, other state agencies, counties, associations, corporations, or individuals covering the methods and procedures to be followed in the management and suppression of these vertebrate pests, the extent of supervision to be exercised by the department, and the use and expenditure of funds appropriated, when this cooperation is necessary to promote the management and suppression of vertebrate pests. Management is:

(a) the correct identification of a vertebrate pest;

(b) recognition of its biology and environmental needs;

(c) assessment of the pest's damage, injury, or nuisance to agriculture, industry, or the public prior to selecting and implementing any integrated or individual control methods to reduce, prevent, or suppress these damages, nuisances, or injuries; and

(d) evaluating the effects of these control methods.

(2) This section does not apply to nongame wildlife managed or protected subject to Title 87, chapter 5, part 1.

History: En. Sec. 1, Ch. 136, L. 1949; amd. Sec. 44, Ch. 310, L. 1974; amd. Sec. 1, Ch. 242, L. 1975; R.C.M. 1947, 3-2701; amd. Sec. 2, Ch. 65, L. 1983; MCA 1981, 81-1-401; redes. 80-7-1101 by Sec. 4, Ch. 65, L. 1983; amd. Sec. 1, Ch. 43, L. 2017.

Cross-References

County vertebrate pest management, Title 7, ch. 22, part 25.

80-7-1102. Expenditures authorized. The department may make expenditures to:

(1) purchase equipment, materials, supplies, and personal services that are necessary to execute the functions imposed on it by this part;

(2) obtain data on vertebrate pesticide registration and research information on alternative vertebrate pest management techniques;

(3) conduct research or evaluation studies;

(4) enter contracts with individuals, universities, other states, state or federal agencies, or other entities it considers appropriate to conduct vertebrate pest management projects;

(5) maintain and support registration of current rodenticides such as compound 1080, strychnine, and zinc phosphide;

(6) seek registration of alternative rodenticides;

(7) develop and implement new vertebrate pest management methods and crop damage assessment techniques;

(8) support vertebrate pest management research and evaluation projects;

(9) educate the agricultural community regarding vertebrate pest management problems and needs;

(10) educate the general public regarding vertebrate pest concerns and the need for vertebrate pest management; and

(11) perform any other related activities.

History: En. Sec. 2, Ch. 136, L. 1949; amd. Sec. 45, Ch. 310, L. 1974; R.C.M. 1947, 3-2702; MCA 1981, 81-1-402; redes. 80-7-1102 by Sec. 4, Ch. 65, L. 1983; amd. Sec. 1, Ch. 144, L. 1987; amd. Sec. 1, Ch. 166, L. 2003.

80-7-1103. Repealed. Sec. 2, Ch. 43, L. 2017.

History: En. Sec. 4, Ch. 136, L. 1949; amd. Sec. 105, Ch. 147, L. 1963; amd. Sec. 46, Ch. 310, L. 1974; R.C.M. 1947, 3-2704; amd. Sec. 3, Ch. 65, L. 1983; MCA 1981, 81-1-403; redes. 80-7-1103 by Sec. 4, Ch. 65, L. 1983.

80-7-1104. Repealed. Sec. 2, Ch. 43, L. 2017.

History: En. Sec. 2, Ch. 144, L. 1987; amd. Sec. 2596, Ch. 56, L. 2009.

80-7-1105. Repealed. Sec. 2, Ch. 43, L. 2017.

History: En. Sec. 3, Ch. 144, L. 1987; amd. Sec. 1, Ch. 280, L. 1993.

80-7-1106. Repealed. Sec. 2, Ch. 280, L. 1993.

History: En. Sec. 4, Ch. 144, L. 1987.

80-7-1107. Repealed. Sec. 2, Ch. 43, L. 2017.

History: En. Sec. 5, Ch. 144, L. 1987.

80-7-1108. Rules. The department may adopt rules necessary to implement this part.

History: En. Sec. 6, Ch. 144, L. 1987.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 12
Invasive Species Council

80-7-1201. Invasive species council — purpose. The purpose of the invasive species council is to advise the governor on a science-based, comprehensive program to identify, prevent, eliminate, reduce, and mitigate invasive species in Montana and to coordinate with public and private partners to develop and implement statewide invasive species strategic plans.

History: En. Sec. 4(1), Ch. 348, L. 2017.

80-7-1202 reserved.

80-7-1203. Duties — reporting — definition. (1) The invasive species council shall:

(a) provide policy level recommendations, direction, and planning assistance for combating infestations of invasive species throughout the state and preventing the introduction of other invasive species;

(b) foster cooperation, communication, and coordinated approaches that support federal, state, provincial, regional, tribal, and local initiatives for the prevention, early detection, and control of invasive species;

(c) identify, coordinate, and maintain an independent science advisory panel that informs Montana's efforts based on the current status, trends, and emerging technology as they relate to invasive species management in Montana;

(d) in coordination with stakeholders, identify and implement priorities for coordination, prevention, early detection, rapid response, and control of invasive species in Montana;

(e) champion priority invasive species issues identified by stakeholders to best protect the state;

(f) advise and coordinate with agency personnel, local efforts, and the scientific community to implement program priorities;

(g) implement an invasive species education and outreach strategy;

(h) create a poster that provides information related to preventing the spread of invasive species and provide copies of the poster to the department of transportation for display at rest areas;

(i) work with regional groups to coordinate regional defense and response strategies; and

(j) work toward establishing and maintaining permanent funding for invasive species priorities.

(2) The council may receive and, subject to appropriation by the legislature, expend donations, gifts, grants, and other money necessary to fulfill its duties.

(3) The council shall report on its activities to the governor, the director of the department of natural resources and conservation, and the environmental quality council in accordance with 5-11-210 annually.

(4) For the purposes of this part, "invasive species" means plants, animals, and pathogens that are nonnative to Montana's ecosystem and cause harm to natural and cultural resources, the economy, and human health.

History: En. Sec. 4(2)-(5), Ch. 348, L. 2017; amd. Sec. 111, Ch. 261, L. 2021; amd. Sec. 2, Ch. 456, L. 2023.

CHAPTER 8
PESTICIDES

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Chapter Cross-References

Department of Agriculture and special levies created, Art. XII, sec. 1, Mont. Const.

Taxation provisions — tax exemption provisions, 15-6-201, 15-6-206, 15-6-207.

Taxation provisions — agricultural appraisal — valuation of land as agricultural, Title 15, ch. 7, part 2.

Land use — Realty Transfer Act — exceptions for agricultural lands, 15-7-307.

Land use — assessment rates for agricultural lands — market value standard — valuation exception for agricultural implements and machinery, 15-8-111.

Financial obligations — obligations on "seed loans" — County Treasurers' lists of delinquent loans, 15-16-701.

Taxation provisions — individual income tax exceptions for farmers and ranchers, 15-30-2512.

Taxation provisions — corporate income tax exemption for agricultural and horticultural organizations, 15-31-102.

Taxation provisions — gasoline and special fuel taxes, Title 15, ch. 70, part 4.

Agricultural vehicle provisions — exemption of farm implements from certain identification requirements, 61-3-431, 69-12-408.

Agricultural vehicle provisions — motor vehicle license exemption for tractor drivers, 61-5-104, 61-8-101.

Agricultural vehicle provisions — exceptions to equipment requirements, 61-9-109, 61-9-215, 61-9-406, 61-10-102, 61-10-122, 61-10-123.

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Agricultural liens — crop liens for seed or grain and liens for hail insurance, Title 71, ch. 3, part 7.

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Land use — state lands classification, Title 77, ch. 1, part 4.

Land use — conflicting or harmonious leasing of state lands for mining and agricultural purposes, 77-3-104, 77-3-120, 77-3-207.

Montana Agricultural Chemical Ground Water Protection Act, Title 80, ch. 15.

Part 1
General Administration

80-8-101. Short title. This chapter may be cited as the "Montana Pesticides Act".

History: En. Sec. 1, Ch. 403, L. 1971; R.C.M. 1947, 27-213.

80-8-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Active ingredient" means:

(a) in the case of a pesticide, other than a plant regulator, defoliant, or desiccant, an ingredient that will prevent, destroy, repel, alter life processes, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests;

(b) in the case of a plant regulator, an ingredient that acts upon the physiology to accelerate or retard the rate of growth or rate of maturation or otherwise alter the normal processes of ornamental or crop plants or their produce;

(c) in the case of a defoliant, an ingredient that will cause the leaves or foliage to drop from a plant;

(d) in the case of a desiccant, an ingredient that will artificially accelerate the drying of plant tissue.

(2) "Adulterated" applies to a pesticide if its strength of purity falls below the professed standard or quality as expressed on labeling or under which it is sold, if any substance has been substituted wholly or in part for the pesticide, or if any valuable constituent of the pesticide has been wholly or in part abstracted.

(3) "Applicator" means a person who applies pesticides by any method.

(4) "Beneficial insects" means those insects that, in the course of their life cycle, carry, transmit, or spread pollen to and from vegetation, act as parasites and predators on other insects, or are otherwise beneficial.

(5) "Commercial applicator" means a person who by contract or for hire applies by aerial, ground, or hand equipment pesticides to land, plants, seed, animals, waters, structures, or vehicles.

(6) "Commercial operator" means a person who applies pesticides under the supervision of a commercial applicator.

(7) "Crop" means a food intended for human or animal consumption or a fiber product.

(8) "Dealer" means a person who sells, wholesales, offers or exposes for sale, exchanges, barters, or gives away within this state any pesticide except those pesticides that are to be used for home, yard, lawn, and garden.

(9) "Defoliant" means a substance or mixture of substances for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(10) "Desiccant" means a substance or mixture of substances for artificially accelerating the drying of plant tissue.

(11) (a) "Device" means any instrument or contrivance intended for destroying, controlling, repelling, or mitigating pests.

(b) The term does not include equipment used for the application of pesticides.

(12) "Environment" means the soil, air, water, plants, and animals.

(13) "Equipment" means equipment used in the actual application of pesticides, including aircraft, ground sprayers and dusters, hand-held applicators, and water surface equipment.

(14) "Farm applicator" means a person applying pesticides to the person's own crops or land.

(15) "Fungi" means all nonchlorophyll-bearing thallophytes (all nonchlorophyll-bearing plants of a lower order than mosses and liverworts), such as rusts, smuts, mildews, molds, and yeasts, except those resident on or in living humans or other animals.

(16) "Herbicide" means a substance or mixture of substances for preventing, destroying, repelling, or mitigating any weed.

(17) "Inert ingredient" means an ingredient that is not an active ingredient.

(18) "Ingredient statement" means either:

(a) a statement of the chemical name and common name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide; or

(b) a statement of the chemical name and common name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any, in the pesticide. However, subsection (18)(a) applies if the preparation is highly toxic to humans, determined as provided in 80-8-105. If the pesticide contains arsenic in any form, the ingredient statement must also include a statement of the percentage of total and water-soluble arsenic, each calculated as elemental arsenic.

(19) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, winged and wingless forms, such as beetles, bugs, wasps, flies, and keds, and to other classes of arthropods whose members are wingless and usually have more than six legs, such as spiders, mites, ticks, centipedes, and wood lice.

(20) "Insecticide" means any substance or mixture of substances for preventing, destroying, repelling, or mitigating any insects present in any environment.

(21) "Label" means the written, printed, or graphic matter on or attached to the pesticide or device or to its immediate container and any outside container or wrapper of any retail package of the pesticide or device.

(22) "Labeling" means all labels and other written, printed, or graphic matter:

(a) on the pesticide or device or any of its containers or wrappers;

(b) accompanying the pesticide or device at any time;

(c) to which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of:

(i) the United States environmental protection agency;

(ii) federal departments of agriculture, interior, or health and human services;

(iii) state experiment stations;

(iv) state agricultural colleges; or

(v) other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of pesticides.

(23) "Misbranded" applies:

(a) to a pesticide or device if its labeling bears any statement, design, or graphic representation relative to its ingredients that is false or misleading;

(b) to a pesticide if:

(i) it is an imitation of or is offered for sale under the name of another pesticide;

(ii) its labeling fails to bear the necessary information required by this chapter;

(iii) the labeling accompanying it does not contain instructions for use that when followed provide adequate public protection;

(iv) the label does not contain a warning or caution statement necessary and, if complied with, adequate to prevent injury to living humans or undue hazard to the environment;

(v) the label of the retail package that is presented or displayed under customary conditions of purchase does not bear an ingredient statement on that part of the immediate container and on the outside or on a wrapper through which the ingredient statement on the immediate container cannot be clearly read;

(vi) any word, statement, or other information required to appear on the labeling is not prominently placed on the labeling with a conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in terms rendering it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(vii) in the case of an insecticide, nematicide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it is injurious to living humans or other vertebrate animals or vegetation, except weeds, to which it is applied or to the person applying the pesticide;

(viii) in the case of a plant regulator, defoliant, or desiccant, when used as directed, it is injurious to humans or other vertebrate animals or vegetation to which it is applied or to the person applying the pesticide. Physical or physiological effects on plants or parts of plants are not injurious when this is the purpose for which the plant regulator, defoliant, or desiccant is applied in accordance with the label claims and recommendations.

(24) "Person" means any natural person, individual, firm, partnership, association, corporation, company, joint-stock association, body politic, or organized group of persons, whether incorporated or not, and any trustee, receiver, assignee, or similar representative.

(25) "Pest" includes any insect, rodent, nematode, snail, slug, or weed and any form of plant or animal life or virus, except a virus on or in living humans or other animals, that is normally considered a pest or that the department declares a pest.

(26) "Pesticide" means any:

(a) substance or mixture of substances, including any living organism or any product derived from a living organism, intended for preventing, destroying, controlling, repelling, altering life processes, or mitigating any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living humans or other animals, that may infect or be detrimental to persons, vegetation, crops, animals, structures, or households or be present in any environment or that the department declares a pest;

(b) substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and

(c) other substances intended for that use named by the department by rule.

(27) (a) "Plant regulator" means any substance or mixture of substances affecting the rate of growth or rate of maturation or for otherwise altering physiological condition of plants.

(b) The term does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

(28) "Public utility applicator" means a person applying pesticides to land and structures owned or leased by a public utility.

(29) "Registrant" means the person registering any pesticide or device under the provisions of this chapter.

(30) "Restricted-use pesticide" means any pesticide, including highly toxic pesticides, that the department or the environmental protection agency has found and determined to be injurious, when used in accordance with registration, label, directions, and cautions, to persons, beneficial insects, animals, crops, or the environment other than the pests it is intended to prevent, destroy, control, or mitigate.

(31) "Retailer" means a person who sells, offers or exposes for sale, exchanges, barters, or gives away within this state any pesticide for home, yard, lawn, and garden use in quantities or concentrations as determined by the department.

(32) "Waste pesticide" means a pesticide that:

(a) may not be used legally because the environmental protection agency or the department has canceled or suspended the pesticide's registration or has taken other administrative action to prohibit use of the pesticide;

(b) will not be used for reasons including but not limited to product damage, toxicity, or obsolescence; or

(c) cannot be disposed of in a legal or economically feasible manner.

(33) "Weed" means any plant or part of the plant that grows where it is not wanted.

History: En. Sec. 4, Ch. 403, L. 1971; amd. Sec. 1, Ch. 447, L. 1973; amd. Sec. 120, Ch. 218, L. 1974; amd. Sec. 1, Ch. 462, L. 1977; R.C.M. 1947, 27-216; amd. Sec. 1, Ch. 51, L. 1991; amd. Sec. 78, Ch. 10, L. 1993; amd. Sec. 2597, Ch. 56, L. 2009; amd. Sec. 1, Ch. 244, L. 2017; amd. Sec. 36, Ch. 3, L. 2019.

80-8-103. Purpose. The control of pesticides and their use is essential for the protection of humans and the environment. Pesticides are currently considered valuable and necessary to provide sufficient quantity of quality foods and for the protection of humans from vector-borne diseases. However, the protection of humans and their essential needs—water, air, food, animals, vegetation, pollinating insects, and shelter from pesticides that are potentially dangerous—is in the public interest now and in the future. Therefore, it is necessary to provide for the control of pesticides.

History: En. Sec. 2, Ch. 403, L. 1971; R.C.M. 1947, 27-214; amd. Sec. 2598, Ch. 56, L. 2009.

80-8-104. Administration. This chapter shall be administered by the department.

History: En. Sec. 3, Ch. 403, L. 1971; R.C.M. 1947, 27-215.

80-8-105. Rules. (1) The department may adopt by reference without a public hearing regulations adopted under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended. The department may, after a public hearing, adopt all rules necessary to carry out this chapter.

(2) The rules may prescribe methods of:

(a) registration, suspension or cancellation of registration, application, use or restricting use, prohibiting use, offering or exposing for sale of any pesticide;

(b) determining whether pesticides are highly toxic to humans;

(c) determining standards of coloring or discoloring for pesticides and subjecting pesticides to the requirements of 80-8-202;

(d) licensing commercial applicators, operators, and dealers, establishing methods of recordkeeping for applicators, operators, and dealers, and providing for the review of the records by the department's authorized agent and the submission of the records to the department upon written request;

(e) issuing farm applicator special-use permits and the maintenance and submission of records by farm applicators issued special-use permits;

(f) collection, examination, and standard deviation from guarantee analysis and umpire analysis of pesticides and devices;

(g) operating and maintaining equipment used by applicators;

(h) developing examinations which must be held periodically throughout the state;

(i) establishing the form and content of all applications for licenses and permits;

(j) designating pesticides that may be sold at retail for home, yard, garden, and lawn use. The department may also limit retail sale of pesticides, up to a specific number of pounds or gallons and concentration which would be sublethal to humans and animals if small amounts of it were accidentally swallowed, inhaled, sprayed, or dusted on the skin.

(k) revoking licenses and permits;

(l) registering or controlling any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own intended to be used with any other pesticide as an aid to the application or effect of that other pesticide, whether or not distributed in a package or container separate from that of a pesticide with which it is to be used;

(m) registering pesticide-fertilizer and other chemical blends or, instead of registration, establishing licensing, inspection, and fees for blending plants;

(n) establishing registration procedures for devices, with a fee not to exceed $5 per type of device, specifying classes of devices to be registered and providing for additional requirements;

(o) imposing conditions for renewal of dealer, applicator, and operator licenses and permits, including recertification training;

(p) establishing procedures for implementing and administering the civil penalties under 80-8-306;

(q) establishing fees for training courses and materials;

(r) establishing standards and procedures for administering a waste pesticide and pesticide container collection, disposal, and recycling program;

(s) establishing special fees on waste pesticides or pesticide containers collected under the waste pesticide and pesticide container collection, disposal, and recycling program. These fees may be based upon volume, type, classification, or other characteristics of a pesticide or a pesticide container and may include a credit for pesticide applicator, dealer, or operator license or permit fees.

(t) establishing standards for pesticide storage, pesticide mixing or loading sites, and bulk pesticide facilities.

(3) (a) Consistent with the provisions of Title 80, chapter 15, whenever the department finds that rules are necessary to carry out the purposes and intent of this chapter, the rules may relate to the time, place, manner, and method of registration, suspension or cancellation of registration, application, or selling of the pesticides, may restrict or prohibit use of pesticides in the state or in designated areas during specified periods of time, and must encompass all reasonable factors that the department considers necessary to prevent damage or injury to:

(i) persons, animals, crops, or pollinating insects from the effect of drift or careless application;

(ii) the environment;

(iii) plants, including forage plants;

(iv) wildlife;

(v) fish and other aquatic life.

(b) In issuing the rules, the department shall give consideration to pertinent research findings and recommendations of other agencies of this state or of the federal government.

(4) If the department finds that an emergency exists which requires immediate action with regard to the registration, use, or application of pesticides, the department may, without notice or hearing, issue necessary orders or rules to protect the public health, welfare, and safety. An order or rule issued under this subsection is effective for the period prescribed by the Montana Administrative Procedure Act. If the department determines that the emergency order or rule should remain in effect, a public hearing under 80-8-106 must be held within the above period to determine whether the order or rule should be adopted by the department.

(5) All rules and orders issued by the department must be made in writing and must be available at the department for public inspection. Except for orders establishing or changing rules of practice and procedure, all orders made and published by the department must include and be based upon written findings of fact. A copy of any rule or order certified by the department must be received in evidence in all courts of this state with the same effect as the original.

History: En. Sec. 22, Ch. 403, L. 1971; amd. Sec. 123, Ch. 218, L. 1974; amd. Sec. 12, Ch. 462, L. 1977; R.C.M. 1947, 27-234; amd. Sec. 1, Ch. 633, L. 1983; amd. Sec. 27, Ch. 668, L. 1989; amd. Sec. 1, Ch. 465, L. 1993; amd. Sec. 1, Ch. 349, L. 2019.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Pesticide registration, 80-8-201.

Prohibited acts relating to pesticides, 80-8-202.

Applicator's and operator's examination, 80-8-206.
Dealer's examination, 80-8-208.
Farm applicators, 80-8-209.
Retail sale of pesticides — education program, 80-8-212.
Sampling and analysis, 80-8-302.

80-8-106. Administrative procedures. The administration of this chapter and all rulemaking and hearing functions under this chapter shall be conducted in accordance with the Administrative Procedure Act.

History: En. Sec. 23, Ch. 403, L. 1971; amd. Sec. 124, Ch. 218, L. 1974; amd. Sec. 13, Ch. 462, L. 1977; R.C.M. 1947, 27-235.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

80-8-107. Notice — public information. (1) As used in this section, the following definitions apply:

(a) "Building operator" means the owner, the owner's agent, or the building manager of any public building or, in the case of a public building that is leased to a tenant who is responsible for the operation of the building, the tenant or the tenant's building manager.

(b) "Public building" means a building that is owned or leased by a public agency, as defined in 18-1-101, and that is open to the public, including but not limited to:

(i) a building that is used for educational, office, or institutional purposes; or

(ii) a library, museum, school, hospital, auditorium, dormitory, or university building.

(2) The building operator who for indoor treatment personally applies or who contracts for or orders the application of a pesticide, excluding an antimicrobial, a disinfectant, a sanitizer, a pest bait, paste, or gel, or other pesticide that is designated by the department pursuant to 80-8-212 for retail sale, shall post a notice at each access to the public building or, if only a room has been treated, at each access to the room in a manner that allows the notice to be read before entering the building or room. However, if a room from which a heating or air-conditioning system draws air has been treated, the notice required by this section must be posted at each access to the public building. The notice must:

(a) be permanently displayed if the pesticide is applied on a regular basis;

(b) be posted at the time of the application if the pesticide is not applied on a regular basis;

(c) contain the name of the pesticide applied; and

(d) contain the phone number at which a person may obtain information, the label, and the material safety data sheet on the pesticide applied.

(3) The applicator or building operator may not remove a notice posted pursuant to this section until the pesticide is dry or the reentry interval stated on the pesticide label has expired, whichever is later.

(4) A building operator shall keep, for 2 years, records of the pesticide applications and the material safety data sheet for each pesticide.

(5) A local government may not adopt standards that are more stringent than the standards established in subsections (2) through (4).

(6) (a) Except as provided in Title 80, chapter 15, the department may, alone or in cooperation with other state or federal agencies, publish information regarding aspects of the use and application sections or registration sections of this chapter. This information may not disclose operations of selling, production, or use of pesticides by any person.

(b) When designating a pesticide as a state restricted-use pesticide, the department shall list the state restricted-use pesticide by rule.

History: En. Sec. 27, Ch. 403, L. 1971; R.C.M. 1947, 27-239; amd. Sec. 28, Ch. 668, L. 1989; amd. Sec. 1, Ch. 454, L. 1997; amd. Sec. 2, Ch. 244, L. 2017.

80-8-108. Advisory council. (1) (a) The director of agriculture may appoint an advisory council to study and make recommendations on special pesticide problems in the state. The council consists of individuals representing, equally, the controlled industry, agriculture, health, and wildlife.

(b) Governmental personnel, university personnel not included, may not be represented on the council. Governmental personnel shall meet with the council in an advisory capacity when requested by the council.

(c) The council may not exceed 12 members.

(d) The director of agriculture shall establish the time period in which the council shall exist. The time period may not exceed 2 years.

(2) The department of agriculture shall provide the necessary administrative, secretarial, and other essential support to the council.

(3) Each member of the council is entitled to compensation as provided in 2-15-122 for each day spent in the performance of duties and must be reimbursed for travel expenses as provided in 2-18-501 through 2-18-503.

(4) The council may request that the department hold a public hearing to assist it in gathering factual data and information on the special problems assigned it.

History: En. Sec. 28, Ch. 403, L. 1971; amd. Sec. 126, Ch. 218, L. 1974; amd. Sec. 14, Ch. 439, L. 1975; amd. Sec. 14, Ch. 462, L. 1977; R.C.M. 1947, 27-240; amd. Sec. 2599, Ch. 56, L. 2009; amd. Sec. 2, Ch. 30, L. 2015.

80-8-109. Educational programs. (1) The department shall develop and conduct appropriate educational programs. The educational programs shall inform those individuals dealing in and applying pesticides as to correct methods of formulating, applying, storing, disposing of, handling, and transporting pesticides.

(2) In developing and administering such programs, the department may consult other state and federal agencies and private industry, as well as such other persons it considers necessary, and may charge a fee for the programs commensurate with their administration costs. The fee may not include the salary or travel expenses of any employee of a state agency or of the Montana cooperative extension service.

(3) All fees collected pursuant to this section must be deposited in the state treasury to the credit of the state special revenue fund and must be spent for the purposes set forth in this section.

History: En. Sec. 29, Ch. 403, L. 1971; R.C.M. 1947, 27-241; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 2, Ch. 633, L. 1983; amd. Sec. 1, Ch. 219, L. 1985; amd. Sec. 1, Ch. 181, L. 1989.

80-8-110. Cooperation with other agencies. (1) The department may cooperate with agencies of this state or its subdivisions or with any agency of any other state or the federal government for the purpose of carrying out the provisions of this chapter, securing uniformity of rules, and entering into reciprocal licensing and certification agreements with other states.

(2) The department and the department of environmental quality shall enter into a memorandum of agreement concerning the inspection, regulation, and responsibilities of persons or activities that may be involved in the management, disposal, storage, transportation, treatment, recycling, or recovery of hazardous wastes and the disposal of solid wastes.

(3) For the purpose of this section, "solid waste" means all putrescible and nonputrescible wastes including but not limited to garbage; rubbish; refuse; hazardous wastes; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials. Solid waste does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of environmental quality, slash and forest debris regulated under laws administered by the department of natural resources and conservation, or marketable wood byproducts.

(4) For the purpose of this section, "hazardous waste" means any waste or combination of wastes of a solid, liquid, contained gaseous, or semisolid form that may cause or contribute to an increase in mortality or an increase in serious illness, taking into account the toxicity of the waste, its persistence and degradability in nature, its potential for assimilation or concentration in tissue, and other factors that may otherwise cause or contribute to adverse acute or chronic effects on the health of persons or other living organisms. Hazardous wastes include but are not limited to wastes that are toxic, radioactive, corrosive, flammable, irritants, or strong sensitizers or that generate pressure through decomposition, heat, or other means, excluding wood chips and wood used for manufacturing or fuel purposes.

History: En. Sec. 30, Ch. 403, L. 1971; amd. Sec. 15, Ch. 462, L. 1977; R.C.M. 1947, 27-242; amd. Sec. 7, Ch. 529, L. 1981; amd. Sec. 328, Ch. 418, L. 1995.

Cross-References

Control of timber slash and debris, Title 76, ch. 13, part 4.

Mining and reclamation, Title 82, ch. 1 through 4.

80-8-111. Waste pesticide and pesticide container collection, disposal, and recycling program. (1) The department shall establish a waste pesticide and pesticide container collection, disposal, and recycling program. The program must be funded by license, permit, and special fees designated for that purpose in this chapter. The department may also establish waste pesticide and pesticide container fees and accept grants, gifts, and other funds to finance this program.

(2) The department may cooperate and contract with a person to conduct and manage the waste pesticide and pesticide container collection, disposal, and recycling program.

(3) (a) The department shall establish a collection program for waste pesticides and pesticide containers. In order to participate in this program, a person shall:

(i) notify the department in advance of the type and amount of waste pesticide or pesticide containers that will be delivered for collection; and

(ii) deliver the waste pesticide or pesticide containers for collection by the department at a time and location designated by the department.

(b) A person may not be subject to an administrative or judicial penalty or action under this chapter as a result of participation in the waste pesticide or pesticide container collection, disposal, and recycling program pursuant to this section.

(4) The department may designate types of waste pesticides or pesticide containers that it will not collect for disposal and recycling under this program.

(5) The department shall consult affected local governments before implementing the collection program under this section.

History: En. Sec. 2, Ch. 51, L. 1991; amd. Sec. 2, Ch. 465, L. 1993; amd. Sec. 290, Ch. 42, L. 1997; amd. Sec. 3, Ch. 244, L. 2017.

80-8-112. Deposit of waste pesticide and pesticide container collection, disposal, and recycling fees. (1) All license, permit, and special fees paid to the department to fund the waste pesticide and pesticide container collection, disposal, and recycling program and any grants or gifts accepted by the department pursuant to 80-8-111(1) must be deposited in an account in the state special revenue fund.

(2) Money in the account must be used by the department to administer the waste pesticide and pesticide container collection, disposal, and recycling program provided for in 80-8-111. Unencumbered and unexpended money remaining in the account at the end of the fiscal year may not lapse but must be carried forward for the purposes of this subsection until appropriated by subsequent legislative action.

History: En. Sec. 3, Ch. 465, L. 1993.

80-8-113 through 80-8-115 reserved.

80-8-116. Pesticide management account — deposit of fees and penalties — investment. (1) There is a pesticide management account within the state special revenue fund established in 17-2-102.

(2) All licensing, permit, registration, and devices and blending plant fees collected under parts 1 and 2 of this chapter must be deposited in the pesticide management account for the purpose of administering this chapter, including but not limited to:

(a) the cost of equipment and facilities;

(b) the cost of inspecting, investigating, analyzing, and examining:

(i) pesticide products;

(ii) applicators, operators, and other users of pesticides;

(iii) dealers and retailers selling pesticides;

(iv) pesticide equipment, storage, disposal, and operational facilities; and

(c) related pest and pesticide activities authorized by Title 80, chapter 7, part 5, and 80-7-711 through 80-7-714 and 80-7-720.

(3) The department may direct the board of investments to invest the funds collected under this section, pursuant to the provisions of 17-6-201. The income from the investments must be credited to the pesticide management account within the state special revenue fund.

History: En. Sec. 10, Ch. 633, L. 1983; amd. Sec. 1, Ch. 588, L. 1991; amd. Sec. 1, Ch. 65, L. 1999.

80-8-117. Pesticide cleanup special revenue account. (1) There is a pesticide cleanup special revenue account in the state special revenue fund established in 17-2-102.

(2) There must be deposited in the pesticide cleanup account any civil penalties collected under 80-8-306.

(3) The funds must be used by the department for cleanup and associated costs when a responsible party cannot be identified and located or if the responsible party is unable or unwilling to clean up the pesticide contamination and there is an imminent need to protect agriculture, health, or the environment.

(4) Unencumbered and unexpended funds remaining in the pesticide cleanup account at the end of the fiscal year may not lapse but must be carried forward for the stated purpose unless appropriated by subsequent legislative action.

(5) If a responsible party is identified and located after expenditure of the funds in the pesticide cleanup account, the department may initiate recovery of the funds through a voluntary agreement or in district court.

History: En. Sec. 2, Ch. 65, L. 1999.

80-8-118 and 80-8-119 reserved.

80-8-120. Local pesticide regulation. (1) (a) A unit of local government may adopt an ordinance to require a commercial applicator, as defined in 80-8-102, to provide notification when applying a pesticide, subject to the following provisions:

(i) The applicator shall post a sign or signs at the time of the pesticide application or provide notification as provided for in subsection (1)(a)(v). The applicator, property owner, or property manager may not remove a sign until the pesticide is dry or the reentry interval on the pesticide label has expired, whichever is later.

(ii) A sign must be:

(A) at least 4 inches in height and 5 inches in width; and

(B) made of weather-resistant material if used for outdoor application.

(iii) A sign must contain:

(A) the words "pesticide application"; and

(B) the telephone number of the applicator, property owner, or property manager who can supply further information about the pesticide.

(iv) A sign must be posted:

(A) at a point clearly visible from each street or road frontage of the property so that the warning is conspicuous from the public right-of-way;

(B) for an interior application, at each public access to the treated property with the front of the sign facing the access;

(C) for a golf course, at a conspicuous place in the clubhouse or pro shop or at the first and tenth tees.

(v) Notification for an application by a mosquito control district or a weed management district must be provided in a local newspaper or on local radio or television stating that the property will be treated and providing the telephone number of an individual who can supply further information on the pesticide applications. Notification under this subsection (1)(a)(v) must be made annually in the spring and periodically during the pesticide application season.

(vi) Posting or notification is not required for the following:

(A) a spot treatment of an area that is less than 100 square feet;

(B) an applicator subject to the environmental protection agency's worker protection standards as published in 40 CFR, part 156, subpart K, and 40 CFR, part 170;

(C) an application on land classified as agricultural land or forest land for taxation purposes;

(D) an application on an irrigation conveyance facility or land or on an irrigation ditch easement or right-of-way;

(E) an application of a pesticide that is a minimum risk pesticide as published by the environmental protection agency in 40 CFR 152.25(g)(1) or a sanitizer, a disinfectant, or a microbial registered with the environmental protection agency;

(F) an application on a railroad facility or right-of-way;

(G) an application on a public utility facility or right-of-way.

(b) A unit of local government that adopts a notification ordinance pursuant to this section shall:

(i) notify the department that it is adopting the ordinance on pesticide notification as provided in this section and provide the department a final copy for the department's register provided for in subsection (4); and

(ii) fund the costs, including but not limited to:

(A) educating its citizens of the ordinance's requirements;

(B) compensating personnel to enforce the ordinance; and

(C) prosecution of a violation of the ordinance.

(c) A unit of local government may not adopt a notification ordinance under this section that imposes additional fee requirements on a commercial applicator.

(2) The department may enter into a cooperative agreement with a unit of local government for the administration and enforcement of local rules adopted under 80-8-105(3)(a).

(3) Except as provided in subsections (1) and (2), a unit of local government may not regulate or prohibit the registration, labeling, distribution, use, or sale of pesticides or enact notification provisions more stringent than those provided for in subsections (1) and (2). It is not the intent of this subsection to prevent local responsibilities for zoning, fire codes, or disposal of pesticides pursuant to Title 75, chapter 10, part 4.

(4) The department shall maintain and, upon request, distribute a register of ordinances adopted by local governing bodies pursuant to subsection (1).

History: En. Sec. 10, Ch. 465, L. 1993; amd. Sec. 1, Ch. 180, L. 1997; amd. Sec. 126, Ch. 114, L. 2003.

80-8-121. Penalty. A person who violates a notification ordinance adopted pursuant to 80-8-120:

(1) is subject to a written warning for the first violation;

(2) is guilty of a misdemeanor and upon conviction may be fined not more than $50 for the second violation; and

(3) is guilty of a misdemeanor and upon conviction may be fined not more than $500 for a third or subsequent conviction.

History: En. Sec. 2, Ch. 180, L. 1997.

Part 2
Registration and Licensing

Part Cross-References

Departmental rules, 80-8-105.

80-8-201. Registration. (1) Each pesticide distributed, sold, or offered for sale within the state or delivered for transportation or transported in intrastate commerce or between points within the state must be registered with the department. The registration must be renewed annually by the manufacturer, formulator, or distributor of the pesticide. The department shall register all federally approved pesticides, and those registered are subject to registration fees and all other provisions of this chapter. All registrations of pesticides expire on December 31 following the date of issuance unless otherwise terminated.

(2) The applicant for registration shall file with the department a statement that includes:

(a) the name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the registrant;

(b) a complete copy of the pesticide label and a statement of all claims to be made for it, including directions for use;

(c) the trade and chemical name of the pesticide; and

(d) if requested by the department, a full description of tests made and the results on which the claims are based. In the case of renewal of registration, a statement is required only for information that is different from that furnished when the pesticide was registered or last reregistered.

(3) A pesticide imported into the state that is subject to and has been registered under the provisions of a federal act providing for the registration of pesticides must be registered in the state. However, the state may restrict the sale or use and application of the pesticide by type of dealer, applicator, time, and place and may establish special registrations of pesticides as

outlined in 80-8-105(3) and in subsection (9) of this section. The annual registration fee must also be paid, and registration information required by the department must be provided.

(4) (a) The applicant shall pay an annual pesticide registration fee for:

(i) each pesticide registered;

(ii) each emergency exemption requested by the state, as provided in the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136p;

(iii) each special local need registration, as provided in the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136v(c)(1); and

(iv) each experimental-use permit registration, as provided in 7 U.S.C. 136c.

(b) The annual pesticide registration fee may not be less than $130 a year or more than $145 a year. The department may adjust by rule the registration fee to maintain adequate funding for the purposes of this chapter.

(5) (a) The department shall assess a special needs fee for each pesticide registered, emergency exemption requested, special local need registration, or experimental-use permit registration to be used for the Montana state university extension service pesticide education program for the purpose of coordinating the certification and training of farm applicators.

(b) The department may adjust by rule the special needs fee to maintain adequate funding for farm pesticide applicator certification and training programs. The fee may not be less than $8 a year or more than $11 a year.

(6) The department may require the submission of the complete formula and certified analytical standards of any pesticide. If it appears to the department that the composition of the pesticide warrants the proposed claims for it and if the pesticide, its labeling, and other material required to be submitted comply with the requirements of 80-8-202, the department shall register the pesticide.

(7) If it does not appear to the department that the pesticide warrants the proposed claims for it or if the pesticide, its labeling, and other material required to be submitted do not comply with this chapter, the department shall notify the applicant of the manner in which the pesticide, labeling, or other material required to be submitted fails to comply with the chapter to provide the applicant an opportunity to make the necessary corrections. If the applicant does not make the corrections upon receipt of the notice, the department may refuse to register the pesticide. The department may suspend or cancel the registration of a pesticide whenever it does not appear that the pesticide or its labeling comply with this chapter or whenever scientific evidence proves that the pesticide endangers humans or the general environment afforded protection under 80-8-105(3)(a). When an application for registration is refused or the department proposes to suspend or cancel a registration, the registrant may pursue administrative remedies under the Montana Administrative Procedure Act and rules of the department.

(8) Registration is not required in the case of a pesticide shipped from one plant in the state to another plant in the state by the same person.

(9) (a) The department, the department of public health and human services, and the department of fish, wildlife, and parks shall review all applications for registration of an experimental-use permit or a registration for special local needs. The departments shall use the same requirements and standards for reviewing registrations established by the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, and regulations adopted under the act. The department shall provide the departments of public health and human services and fish, wildlife, and parks with a complete copy of the application, related correspondence, and a statement of the department's proposed action on the application. The department, the department of public health and human services, and the department of fish, wildlife, and parks shall approve or disapprove the application within 10 days after the receipt of the application. If the department, the department of public health and human services, and the department of fish, wildlife, and parks are in agreement with the proposed registration, the department shall issue the registration.

(b) The department shall establish a time and place for an interagency conference for the purposes of resolving the registration of any pesticide or device. If two of the departments approve the proposed registration, the department may issue the registration.

(c) The registrant applying for registration must be notified as to proposed changes in registration. If the departments cannot resolve the proposed registration following the

interagency conference, the registrant may request a joint administrative hearing before the departments of agriculture, public health and human services, and fish, wildlife, and parks.

(d) Following the interagency conference and, if requested, the administrative hearing, if the proposed registration of a pesticide or device has not been resolved, the department of agriculture shall appoint an advisory council as outlined in 80-8-108 to resolve by majority vote the registration of the pesticide or device. The advisory council's recommendations on the registration must be accepted by the departments and implemented by the department of agriculture.

(10) (a) Pesticides registered under any federal law when canceled for sale and use in total or in part by a federal agency responsible for registration are considered canceled in total or in part for sale and use in Montana. The cancellation is effective on the final date of sale or use allowed under the federal law and rules or orders of the federal agency. Except as provided in subsection (10)(b), if the federal cancellation allows existing stock to be used past the final date of cancellation, the sale or use in this state may not exceed 2 years. The department shall provide technical assistance to any person in possession of the products to ensure their proper disposal, relabeling, or removal.

(b) Pesticide products canceled under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136a-1(i)(5), may be sold and used according to labeling requirements or other requirements for a period not to exceed 6 years from the date that distribution from the registrant, manufacturer, formulator, or distributor is terminated.

History: En. Sec. 5, Ch. 403, L. 1971; amd. Sec. 121, Ch. 218, L. 1974; amd. Sec. 2, Ch. 462, L. 1977; R.C.M. 1947, 27-217; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 230, L. 1979; amd. Sec. 3, Ch. 633, L. 1983; amd. Sec. 2, Ch. 181, L. 1989; amd. Sec. 2, Ch. 588, L. 1991; amd. Sec. 1, Ch. 139, L. 1993; amd. Sec. 4, Ch. 465, L. 1993; amd. Sec. 329, Ch. 418, L. 1995; amd. Sec. 11, Ch. 73, L. 1997; amd. Sec. 1, Ch. 141, L. 2001; amd. Sec. 4, Ch. 244, L. 2017.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.
Pesticide embargoes, 80-8-303.
Penalties for violations, 80-8-306.
Fee for agricultural chemical ground water protection, 80-15-302.

80-8-202. Prohibited acts. (1) It is unlawful for a person to distribute, sell, or offer for sale within this state or deliver for transportation or transport in intrastate commerce between points within this state any of the following:

(a) a pesticide that has not been registered pursuant to the provisions of 80-8-201 or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration or if the composition of a pesticide differs from its composition as represented in connection with its registration or if registration or reregistration has been refused, revoked, canceled, or suspended. The department may allow a change in the labeling or formula of a pesticide within a registration period without requiring reregistration of the product when the change does not adversely affect the product for its intended use and if proper application for the change is made.

(b) a pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to the container and to the outside container or wrapper of the retail package, if there is one, through which the required information on the immediate container cannot be clearly read, a label bearing:

(i) the name and address of the manufacturer, registrant, or person for whom manufactured;

(ii) the trade and chemical name, brand, or trademark under which the article is sold;

(iii) the net weight or measure of the content, subject to reasonable variations that the department may permit;

(c) a pesticide that contains any substance or substances in quantities highly toxic to humans, determined as provided in 80-8-105, unless the label bears, in addition to any other matter required by this chapter:

(i) the skull and crossbones;

(ii) the word "poison" prominently in red on a background of distinctly contrasting color;

(iii) a statement of an antidote for the pesticide;

(d) pesticides commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or discolored, as provided by regulations issued in accordance with this chapter, or any other white powder pesticide that the department, after investigation of and after public hearing on the necessity for the action for the protection of the public health and the environment and the feasibility of the coloration or discoloration, by regulations requires to be distinctly colored or discolored, unless it has been so colored or discolored. The department may exempt any pesticide to the extent that it is intended for a particular use from the coloring or discoloring required or authorized by this section if it determines that the coloring or discoloring for the use is not necessary for the protection of the public health and the environment.

(e) a pesticide that is adulterated or misbranded or any device that is misbranded.

(2) It is unlawful for a person to:

(a) detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this chapter or rules adopted under this chapter or to add any substance to or take any substance from a pesticide in a manner that may defeat the purpose of this chapter;

(b) use for the person's own advantage or reveal, other than to the department or proper officials or employees of the state or the courts of this state in response to a subpoena, to physicians or to veterinarians or in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of 80-8-201.

History: En. Sec. 6, Ch. 403, L. 1971; R.C.M. 1947, 27-218; amd. Sec. 9, Ch. 20, L. 1979; amd. Sec. 2600, Ch. 56, L. 2009.

Cross-References

Rulemaking authority, 80-8-105.
Penalty for violations, 80-8-306.

80-8-203. Commercial applicator. (1) It is unlawful for a person to engage in the business of applying pesticides for another without a pesticide applicator's license obtained from the department of agriculture. An application for a pesticide applicator's license must be accompanied by a fee of $75. The provisions of this subsection do not apply to a person employed only to operate equipment used for the application of a pesticide if the person has no financial interest or other control over the equipment other than its day-to-day mechanical operation for the purpose of applying any pesticide.

(2) Public utility applicators must be licensed in the same manner as commercial applicators, provided that public utility operators working under public utility applicators are not required to be licensed except as provided in 80-8-205.

(3) A veterinarian licensed as provided in Title 37, chapter 18, part 3, is not required to be licensed to apply nonrestricted pesticides, provided that the veterinarian registers with the department each year. The veterinarian must meet all other requirements and rules of the Montana Pesticides Act. The department shall consider the professional licensing requirements for veterinarians when adopting rules in relation to transactions and activities of a veterinary practice.

(4) An applicator is responsible for the use of any pesticide by an operator or employee under the applicator's supervision or employment.

(5) The department shall assess an additional annual license fee of $10 on applicators to fund the waste pesticide and pesticide container collection, disposal, and recycling program. The department may by rule adjust the disposal fee to maintain adequate funding for the administration of the waste pesticide and pesticide container collection, disposal, and recycling program. The fee may not be less than $10 a year or more than $15 a year. Fees collected under this subsection must be deposited in the state special revenue account pursuant to 80-8-112.

History: En. Sec. 9, Ch. 403, L. 1971; amd. Sec. 2, Ch. 447, L. 1973; amd. Sec. 4, Ch. 462, L. 1977; R.C.M. 1947, 27-221; amd. Sec. 2, Ch. 230, L. 1979; amd. Sec. 4, Ch. 633, L. 1983; amd. Sec. 3, Ch. 181, L. 1989; amd. Sec. 5, Ch. 465, L. 1993; amd. Sec. 1, Ch. 216, L. 2003; amd. Sec. 5, Ch. 244, L. 2017.

80-8-204. Application for applicator's license. (1) Application for a pesticide applicator's license provided for in 80-8-203 must be made annually to the department before applying pesticides in any calendar year, and a pesticide applicator who is applying for renewal

of a license shall do so on or before March 1 of that calendar year. A pesticide applicator who applies for renewal of a license after March 1 must be assessed a $25 late licensing fee.

(2) An individual applying for a license to engage in aerial application of pesticides shall certify on the application that the individual has met all the federal aviation administration and the department of transportation requirements for aerial pesticide applicators.

History: En. Sec. 10, Ch. 403, L. 1971; amd. Sec. 122, Ch. 218, L. 1974; amd. Sec. 33, Ch. 213, L. 1975; amd. Sec. 5, Ch. 462, L. 1977; R.C.M. 1947, 27-222; amd. Sec. 3, Ch. 230, L. 1979; amd. Sec. 1, Ch. 184, L. 1981; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 5, Ch. 633, L. 1983; amd. Sec. 212, Ch. 483, L. 2001.

80-8-205. Commercial operator. (1) The department of agriculture may establish procedures for controlling pesticide operators including necessary fees by regulation.

(2) The department may by rule establish a fee to be paid by commercial operators to fund the waste pesticide and pesticide container collection, disposal, and recycling program. Fees collected under this subsection must be deposited in the state special revenue account pursuant to 80-8-112.

History: En. Sec. 11, Ch. 403, L. 1971; R.C.M. 1947, 27-223; amd. Sec. 6, Ch. 465, L. 1993.

80-8-206. Applicator's and operator's examination. (1) The department shall publish and distribute or have available upon request information that may be helpful to persons engaged in the application of pesticides, including information that may be required or that may appear upon any examination given to applicators and operators by the department.

(2) The department shall require an applicant for a license to show upon written examination that the person possesses adequate knowledge concerning the proper use and application of pesticides under the classification for which the person has applied, provided that the applicator and operator may not be required to take a reexamination upon renewal of licensing.

History: En. Sec. 12, Ch. 403, L. 1971; R.C.M. 1947, 27-224; amd. Sec. 2601, Ch. 56, L. 2009.

Cross-References

Publication of public information, 80-8-107.

80-8-207. Dealers. (1) A person may not sell, offer for sale, deliver, or have delivered within the state a pesticide without first obtaining a license from the department for each calendar year or portion of a year. A separate dealer's license and fee is required for each location or outlet from which pesticides are distributed, sold, held for sale, or offered for sale. Pesticide field personnel or salespeople employed directly out of the same location or outlet and under a licensed dealer are not required to obtain a license. The dealer shall furnish the department with the names and addresses of the dealer's field personnel and salespeople selling pesticides within the state.

(2) The department shall require an applicant for a dealer's license to show, upon written examination, that the person possesses adequate knowledge related to the responsibilities of a pesticide dealer. Licensed dealers are not required to repeat an examination to renew their license provided they have earned the required recertification credits for renewal of that license.

(3) The application for a license must be accompanied by a fee of $75. A dealer applying for renewal of a license shall apply on or before March 1 of the calendar year. A dealer applying for renewal of a license after March 1 must be assessed a $25 late licensing fee.

(4) The dealer shall require the purchaser of a restricted pesticide to exhibit the purchaser's license or permit issued under authority of this chapter, or the dealer may verify, under procedures authorized by the department, the purchaser's license or permit through a department list or by electronic means before completing a sale. The department may adopt rules concerning dealer verification of licenses and permits.

(5) The department shall assess an additional annual license fee of $10 on dealers to fund the waste pesticide and pesticide container collection, disposal, and recycling program. The department may by rule adjust the disposal fee to maintain adequate funding for the administration of the waste pesticide and pesticide container collection, disposal, and recycling program. The fee may not be less than $10 a year or more than $15 a year. Fees collected under this subsection must be deposited in an account in the state special revenue fund pursuant to 80-8-112.

(6) Pharmacists licensed as provided for in 37-7-302, veterinarians licensed as provided for in 37-18-302, veterinary dispensing technicians registered as provided in 37-18-806, and

certified pharmacies licensed under 37-7-321 are not required to be licensed to sell pesticides if the certified pharmacies and veterinarians register with the department each year. However, the certified pharmacies and veterinarians must meet all other requirements concerning the commercial sale of pesticides. The department shall take into account the professional licensing requirements of pharmacists, certified pharmacies, and veterinarians when adopting rules.

History: En. Sec. 13, Ch. 403, L. 1971; amd. Sec. 3, Ch. 447, L. 1973; amd. Sec. 6, Ch. 462, L. 1977; R.C.M. 1947, 27-225; amd. Sec. 4, Ch. 230, L. 1979; amd. Sec. 2, Ch. 184, L. 1981; amd. Sec. 6, Ch. 633, L. 1983; amd. Sec. 4, Ch. 181, L. 1989; amd. Sec. 7, Ch. 465, L. 1993; amd. Sec. 3, Ch. 65, L. 1999; amd. Sec. 2, Ch. 216, L. 2003; amd. Sec. 126, Ch. 467, L. 2005; amd. Sec. 6, Ch. 244, L. 2017; amd. Sec. 11, Ch. 759, L. 2023.

80-8-208. Dealer's examination. Each applicant applying for a dealer's license and the applicant's employees in charge of pesticide sales must be required to pass a reasonable examination administered by the department. Dealers applying for relicensing may not be required to take an additional examination if they have met the department's requirements.

History: En. Sec. 14, Ch. 403, L. 1971; R.C.M. 1947, 27-226; amd. Sec. 2602, Ch. 56, L. 2009.

80-8-209. Farm applicators. (1) Farm applicators shall obtain a special-use permit prior to purchasing and using a pesticide designated by the department as a restricted-use pesticide. The fee for the permit is $45. The special-use permit is effective for 5 calendar years. The department may establish a staggered years system of issuing permits. Revenue generated by the permit fee must be expended in the following manner:

(a) $15 to the department to administer the permitting program;

(b) $5 to the Montana state university-Bozeman extension service:

(i) to train extension service agents regarding farm pesticide applicator certification and training; and

(ii) to operate farm pesticide applicator certification and training programs; and

(c) $25 to the cooperative extension service for conducting farm pesticide applicator certification and training programs.

(2) Restricted pesticides may not be utilized by farm applicators or their employees except for the purpose of producing or protecting an agricultural commodity on property owned, leased, or rented by the applicator.

(3) Farm applicators shall qualify for their first permit by either passing a graded written examination or attending a training course approved by the department and then taking an ungraded written examination. The examinations and course must meet the minimum certification standards and procedures established by the environmental protection agency except as otherwise provided by this chapter.

(4) The department may require farm applicators to attend a mandatory training session and pass a written examination for those restricted pesticides that are extremely toxic or for which an effective antidote is not available. The department may require farm applicators handling these pesticides to maintain use records.

(5) The department shall require farm applicators to requalify for renewal of the 5-year permit by attending an approved training program. The department shall establish by rule a uniform system of administering the recertification training program. Online recertification training for farm applicators in order to fulfill all recertification requirements must be available to farm applicators. The department and the Montana state university-Bozeman extension service shall enter into a cooperative agreement to establish an online training program for farm applicators. The department may credit only training related to the standards set forth in subsection (4).

(6) Provisions of this chapter relating to certification of farm applicators do not apply to a farm applicator applying nonrestricted pesticides on the applicator's own land or on lands of neighbors if the farm applicator:

(a) operates farm property and operates and maintains pesticide application equipment primarily for the applicator's own use;

(b) is not regularly engaged in the business of applying pesticides for hire and does not represent to the public that the farm applicator is a pesticide applicator;

(c) operates pesticide application equipment only in the vicinity of the applicator's own property and for the accommodation of immediate neighbors.

(7) (a) The department shall assess an additional permit fee of $15 on farm applicators to fund the waste pesticide and pesticide container collection, disposal, and recycling program.

(b) Farm applicators must be assessed the fee at the beginning of the next 5-year permit renewal period. The department may assess a prorated fee for a farm applicator becoming licensed within a 5-year permit renewal period.

(c) Fees collected under this subsection (7) must be deposited in the state special revenue account pursuant to 80-8-112.

History: En. Sec. 16, Ch. 403, L. 1971; amd. Sec. 8, Ch. 462, L. 1977; R.C.M. 1947, 27-228(part); amd. Sec. 10, Ch. 20, L. 1979; amd. Sec. 3, Ch. 184, L. 1981; amd. Sec. 7, Ch. 633, L. 1983; amd. Sec. 1, Ch. 28, L. 1985; amd. Sec. 8, Ch. 465, L. 1993; amd. sec. 36, Ch. 308, L. 1995; amd. Sec. 7, Ch. 244, L. 2017; amd. Sec. 2, Ch. 349, L. 2019; amd. Sec. 12, Ch. 14, L. 2021.

80-8-210. Licensing nonresidents. Any nonresident applying for a license under this chapter to operate in Montana shall file a written power of attorney designating the secretary of state as the agent of such nonresident upon whom service of process may be had in the event of any suit against the nonresident person, and such power of attorney shall be so prepared and in such form as to render effective the jurisdiction of the courts of Montana over such nonresident applicant; provided, however, that any such nonresident who has a duly appointed resident agent upon whom process may be served as provided by law is not required to designate the secretary of state as such agent. The secretary of state shall be allowed such fees as provided by law for designating resident agents. The department shall be furnished with a copy of such designation of the secretary of state or of a resident agent, such copy to be duly certified by the secretary of state.

History: En. Sec. 17, Ch. 403, L. 1971; R.C.M. 1947, 27-229; amd. Sec. 11, Ch. 20, L. 1979.

80-8-211. Revocation of licenses and permits. (1) The department shall establish the policy and procedures on the revocation of licenses or permits. The department may refuse to grant or renew or may revoke or modify a license or permit, as the case may require, when the department is satisfied that the licensee or permittee is not qualified to sell, use, or apply pesticides under the conditions in the locality in which the licensee or permittee operates or has operated or that the licensee or permittee has committed any of the following acts, each of which is considered a violation of this chapter:

(a) made false or fraudulent claims or recommendations through any media misrepresenting the effect of materials or methods to be used;

(b) applied or sold unapproved or illegal materials or applied or sold a pesticide without possessing a current and appropriate license or permit;

(c) operated in a faulty, careless, or negligent manner;

(d) operated faulty or unsafe equipment;

(e) refused or neglected to comply with the provisions of this chapter, rules adopted under this chapter, or any lawful order of the department;

(f) refused or neglected to keep and maintain the records required by this chapter or to make reports when and as required;

(g) made false or fraudulent records or reports;

(h) operated equipment for the commercial application of a pesticide without having a license or permit;

(i) used fraud or misrepresentation in making an application for a license or permit or renewal of a license or permit;

(j) used or applied a registered pesticide inconsistent with its labeling or the label or the department restrictions on the use of that pesticide;

(k) made false or misleading statements in connection with a pest inspection of land, crops, yards, or any premises in an attempt to induce any person to engage the licensee's or permittee's services to eliminate, control, or mitigate the alleged pest or made false or misleading statements concerning the effectiveness of any pesticide or its application;

(l) failed to satisfy a judgment entered against the licensee or permittee as a result of a complaint concerning the use of a pesticide.

(2) Decisions of the department relating to the issuing of licenses or permits may be appealed.

History: En. Sec. 18, Ch. 403, L. 1971; amd. Sec. 9, Ch. 462, L. 1977; R.C.M. 1947, 27-230; amd. Sec. 4, Ch. 184, L. 1981; amd. Sec. 1, Ch. 189, L. 1995.

80-8-212. Retail sale of pesticides — education program. (1) The department of agriculture is authorized to designate the pesticides that may be sold in this state at retail for home, yard, garden, and lawn use. Only pesticides so designated may be sold at retail. The department may also limit the retail sale of such designated pesticides to quantities up to a specific number of pounds or gallons and of such concentrations as would be sublethal to humans and animals if small amounts thereof were accidentally swallowed, inhaled, sprayed, or dusted on the skin.

(2) Subject to the availability of funds, the department and the Montana state university-Bozeman extension service shall enter into a cooperative agreement to establish an education program for retailers and the general public on pests, pesticides, and alternative control methods.

History: En. Sec. 15, Ch. 403, L. 1971; amd. Sec. 4, Ch. 447, L. 1973; amd. Sec. 7, Ch. 462, L. 1977; R.C.M. 1947, 27-227; amd. Sec. 3, Ch. 588, L. 1991; amd. sec. 36, Ch. 308, L. 1995.

80-8-213. Government agencies. (1) All state agencies, municipal corporations, or any other governmental agencies are subject to the provisions of this chapter and rules adopted under this chapter concerning the application or sale of pesticides. Applicators and operators applying pesticides and dealers selling pesticides for agencies, municipal corporations, or any governmental agencies are subject to the provisions of 80-8-203 through 80-8-208.

(2) The department shall issue a limited commercial applicator's or dealer's license for an annual fee of $50, which is valid only when an applicator or dealer is applying or selling pesticides for a state agency, municipal corporation, or any other governmental agency, provided that the jurisdictional health officer, state veterinarian, their duly authorized representatives, or governmental research personnel are exempt from this licensing requirement when applying pesticides to experimental areas.

(3) (a) A governmental agency shall pay for each of its first four employee applicators:

(i) an annual applicator's fee of $60; and

(ii) an additional fee of $10 to fund the waste pesticide and pesticide container collection, disposal, and recycling program. The department may by rule adjust the disposal fee to maintain adequate funding for the administration of the waste pesticide and pesticide container collection, disposal, and recycling program. The fee may not be less than $10 a year or more than $15 a year.

(b) A governmental agency shall pay for each additional employee applicator:

(i) an annual applicator's fee of $5; and

(ii) an additional fee of $10 to fund the waste pesticide and pesticide container collection, disposal, and recycling program. The department may by rule adjust the disposal fee to maintain adequate funding for the administration of the waste pesticide and pesticide container collection, disposal, and recycling program. The fee may not be less than $10 a year or more than $15 a year.

(c) A government agency may not be required to pay more than $895 annually for the licensing of employees as applicators and operators.

(d) Fees collected pursuant to this subsection (3) for the purpose of funding the waste pesticide and pesticide container collection, disposal, and recycling program must be deposited in the state special revenue account pursuant to 80-8-112.

(4) Government employees becoming certified applicators only to qualify for conducting pesticide education courses may not be charged a license fee but are limited to providing the courses. Government operators are subject to rules adopted pursuant to 80-8-205, including the license fee.

History: En. Sec. 19, Ch. 403, L. 1971; amd. Sec. 10, Ch. 462, L. 1977; R.C.M. 1947, 27-231; amd. Sec. 8, Ch. 633, L. 1983; amd. Sec. 9, Ch. 465, L. 1993; amd. Sec. 3, Ch. 216, L. 2003; amd. Sec. 8, Ch. 244, L. 2017.

80-8-214. Liability. The department shall annually require from each commercial pesticide applicator proof of financial responsibility in amounts to be determined under rules promulgated by the department.

History: En. Sec. 20, Ch. 403, L. 1971; amd. Sec. 29, Ch. 13, L. 1977; amd. Sec. 11, Ch. 462, L. 1977; R.C.M. 1947, 27-232.

Part 3
Enforcement and Penalties

80-8-301. Report of loss or damage — effect of failure to report. (1) A person suffering loss or damage resulting from the use or application of any pesticide by any person shall, within 30 days from the time the occurrence of the loss became known to the person, file with the department of agriculture a verified report of loss setting forth, so far as known to the claimant, the following:

(a) name and address of claimant;

(b) type, kind, and location of property alleged to be injured or damaged;

(c) date the alleged injury or damage occurred;

(d) name of person applying the pesticide and allegedly responsible for the loss or damage;

(e) name of the owner or occupant of the property for whom the pesticide application was made.

(2) The filing of a report or the failure to file a report may not be alleged in any complaint that might be filed in a court of law, and the failure to file may not of itself be considered any bar to the maintenance of a criminal or civil action.

(3) The failure to file a report is not a violation of this chapter. However, if the person failing to file a report is the only one injured from the use or application of a pesticide by any person, the department may refuse to hold a hearing for the denial, suspension, or revocation of a license issued under this chapter until the report is filed. The filing of a report does not constitute institution of a civil or criminal suit in any court, state or federal.

History: En. Sec. 21, Ch. 403, L. 1971; R.C.M. 1947, 27-233; amd. Sec. 5, Ch. 184, L. 1981; amd. Sec. 2603, Ch. 56, L. 2009.

80-8-302. Sampling and analysis. (1) The department shall have the authority to sample, inspect, and analyze pesticides or devices distributed within this state wherever and whenever and to the extent necessary to determine whether the pesticides or devices are in compliance with the provisions of this chapter. The department is authorized with a warrant or the consent of the inhabitant or owner to enter public or private premises, including vehicles, to have access to pesticides or devices and to records relating to their distribution.

(2) The methods of sampling and analysis must be based on:

(a) validated methods for the laboratory; and

(b) standard methods and guidance for the sampling.

(3) In all administrative or legal actions involving the composition, identification, or quantification of a pesticide, a certified copy of the official analysis signed by the department's authorized chemist must be accepted as prima facie evidence of the determinations the official analysis contains.

History: En. Sec. 7, Ch. 403, L. 1971; R.C.M. 1947, 27-219; amd. Sec. 6, Ch. 184, L. 1981; amd. Sec. 9, Ch. 244, L. 2017.

Cross-References

Departmental rules, 80-8-105.

80-8-303. Embargo. (1) Whenever a duly authorized agent of the department of agriculture finds or has probable cause to believe that any pesticide or device is adulterated or misbranded, has not been registered under the provisions of 80-8-201, fails to bear on its label the information required by this chapter, or is a white powder pesticide and is not colored as required under this chapter, the agent shall affix to the article a tag or other appropriate marking giving notice of the failure and stating that the article has been detained or embargoed and warning all persons not to remove or dispose of the article by sale or otherwise until permission for removal or disposal is given by the agent or the court. A person who removes or disposes of a detained or embargoed article by sale or otherwise without prior permission or who removes or alters the tag or marking is guilty of a misdemeanor and may be charged accordingly or may be subjected to appropriate administrative proceedings, or both.

(2) When an article detained or embargoed under subsection (1) has been found by the agent to be in violation of subsection (1) and after 30 days the violation has not been resolved, the agent may petition the district court in whose jurisdiction the article is detained or embargoed for

a condemnation of the article. When the agent has found that an article detained or embargoed is not adulterated or misbranded, the agent shall remove the tag or other marking.

(3) If the court finds that a detained or embargoed article is in violation of this chapter or rules adopted under this chapter, the article must after entry of the decree be destroyed at the expense of the claimant of the article, under the supervision of the agent, and all court costs and fees and storage and other proper expenses must be assessed against the claimant of the pesticide or device or the claimant's agent. However, when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after costs, fees, and expenses have been paid and a good and sufficient bond has been executed, conditioned upon the proper labeling or processing of the pesticide or device, may by order direct that the article be delivered to the claimant of the article for labeling or processing under the supervision of an agent of the department. The expense of supervision must be paid by the claimant. The article must be returned to the claimant of the pesticide or device on the representation to the court by the department that the article is no longer in violation of this chapter and that the expenses of supervision have been paid.

History: En. Sec. 8, Ch. 403, L. 1971; amd. Sec. 28, Ch. 13, L. 1977; amd. Sec. 3, Ch. 462, L. 1977; R.C.M. 1947, 27-220; amd. Sec. 7, Ch. 184, L. 1981; amd. Sec. 2604, Ch. 56, L. 2009; amd. Sec. 10, Ch. 244, L. 2017.

80-8-304. Investigation and enforcement authority. (1) In enforcing this chapter, the department or its authorized agents, upon reasonable cause, may enter upon private and public premises and property with a warrant or consent of the inhabitant or owner to inspect or investigate at reasonable times:

(a) equipment used for applying pesticides;

(b) actual or reported adverse effects caused by pesticides in humans, crops, animals, land, or other property;

(c) records on the selling or use of pesticides and the person's stock of pesticides;

(d) handling, use, application, storage, and disposal of pesticides by any person;

(e) pesticides being applied or to be applied and to sample the pesticides or agricultural commodities;

(f) the use and application of a pesticide;

(g) the environment alleged to have been exposed to pesticides and to collect and analyze environmental samples;

(h) a person's compliance with pesticide worker protection standards and labeling, including handlers and workers;

(i) a person's compliance with pesticide ground water and environmental protection agency endangered species standards and labeling; or

(j) a person's compliance with licensing, labeling, permitting, and certification requirements.

(2) The department is authorized to investigate all incidents involving the application, sale, introduction, or use of registered pesticides or compounds capable of acting in the manner of pesticides when the incidents have a reasonable potential to adversely affect the public environment or persons.

(3) The investigation or inspection authority provided for in this section may be exercised over persons not possessing a required license or permit.

History: En. Sec. 31, Ch. 403, L. 1971; amd. Sec. 16, Ch. 462, L. 1977; R.C.M. 1947, 27-243; amd. Sec. 8, Ch. 184, L. 1981; amd. Sec. 2, Ch. 189, L. 1995.

80-8-305. General violations — compliance orders. (1) Consistent with the provisions of Title 80, chapter 15, it is unlawful for a person:

(a) to discard any pesticide or pesticide container in a manner that causes injury to humans, domestic animals, or wildlife or that pollutes any waterway in a way harmful to any wildlife in the waterway or to the environment;

(b) to handle, transport, store, display, or distribute pesticides or pesticide containers in a manner that endangers humans or the environment or that endangers food or any other products that may be transported, stored, displayed, or distributed with the pesticides;

(c) to handle, apply, or attempt to apply any registered pesticide for which the person does not have an appropriate, complete, or legible label at hand;

(d) to apply or attempt to apply any registered pesticide in a manner that is inconsistent with the labeling, as defined in 80-8-102; or

(e) to use any unregistered chemical or biological agent that is required to be registered as a pesticide by the Montana Pesticides Act.

(2) It is unlawful for a person to manufacture, formulate, or store any registered pesticide or a component or byproduct of a registered pesticide in a manner that the pesticide, component, or byproduct cannot be contained or confined within the boundaries of the lands owned by or under the appropriate control of the person involved. The containment or confinement of odor is exempted from the provisions of this subsection.

(3) (a) The department may issue a compliance order to a person violating the provisions of 80-8-211, the provisions of this section, or any other requirement established pursuant to this chapter. The compliance order may be issued to any person, including the person's employees, agents, or subcontractors.

(b) The provisions of this subsection (3) are not intended to void or affect indemnity or liability agreements between the person who owns, leases, or has possession or control of the site and the person who sold the site, who is the lessor, or who has relinquished possession or control of the site.

(4) A compliance order may require the cleanup of any pesticide that a person has accidentally or purposely dumped, spilled, misused, or unlawfully used in violation of this section. The department shall allow the recipient of a compliance order to spread, treat, or dispose of soils contaminated by a pesticide if the person can document and prove to the satisfaction of the department that the soil will be beneficially used or that the pesticide in the soil will physically, chemically, or biologically degrade and that neither the beneficial use of the soil nor the degradation of the pesticide in the soil will adversely affect agriculture, human health, or the environment. Prior to issuing a compliance order requiring cleanup of a pesticide, the department shall consult with the department of environmental quality to ensure that the provisions of Title 75, chapter 10, part 4, are considered. If a pesticide or soil contaminated by a pesticide is subject to the provisions of Title 75, chapter 10, part 4, and there is no beneficial use of the soil as determined by the department, the department of environmental quality is responsible for regulating the cleanup and disposal of the pesticide and the soil contaminated by the pesticide. The department may not allow a person to spread, treat, or dispose of soils contaminated by a canceled or suspended pesticide without the specific approval of the department of environmental quality or the U.S. environmental protection agency, or both, as required on a case-by-case basis.

(5) When issuing a compliance order, the department may require a person who has violated a provision of this chapter to conduct monitoring to assist in determining the presence or level of concentration of pesticides in the environment and the effectiveness of cleanup efforts. The department shall specify criteria in the compliance order for determining the duration of monitoring.

(6) A compliance order must specify the requirement of this chapter that has been violated and establish a time schedule for compliance. In establishing a time schedule for compliance, the department shall take into account the seriousness of the violation and any good faith efforts that the person has made to comply with the requirement that has been violated. A compliance order issued under this section must be served either by a person qualified to perform service under the Montana Rules of Civil Procedure or by certified mail.

History: En. Sec. 32, Ch. 403, L. 1971; R.C.M. 1947, 27-244; amd. Sec. 9, Ch. 184, L. 1981; amd. Sec. 5, Ch. 181, L. 1989; amd. Sec. 29, Ch. 668, L. 1989; amd. Sec. 4, Ch. 588, L. 1991; amd. Sec. 3, Ch. 189, L. 1995; amd. Sec. 330, Ch. 418, L. 1995.

80-8-306. Penalties. (1) A person convicted of violating any of the provisions of this chapter or the rules issued under this chapter or who misrepresents, prevents, or attempts to prevent the department or its authorized agent in performance of its duty in connection with the provisions of this chapter is guilty of a misdemeanor and shall be fined not less than $100 but not more than $1,500.

(2) The department or its authorized representative may apply to the district court of the county where a violation is about to occur or has occurred to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions

of this chapter or any rule promulgated under the chapter notwithstanding the existence of other remedies of law. When a person makes pesticide applications in more than one county on a commercial basis without a license or permit or operates in violation of a lawful written order of the department in more than one county, the district court of Lewis and Clark County has concurrent jurisdiction with the district court of another county where a violation has occurred or is about to occur and the department may select and proceed in the court that is most appropriate under the circumstances. The injunction is to be issued without bond.

(3) Nothing in this chapter requires the department or its authorized agent to report minor violations of the chapter for prosecution or for the institution of seizure proceedings when it believes that the public interest will be best served by other remedial action, by a suitable notice of warning in writing, or by a lawful written order. This chapter does not apply to common carriers transporting shipments tendered to them by the general public.

(4) Any person who with intent to defraud uses or reveals information relative to formulas of products acquired under the authority of 80-8-201 shall, upon conviction, be fined not more than $500 or be imprisoned for not more than 1 year, or both.

(5) (a) Any registrant, applicator, dealer, retailer, or other person who commits a major violation of this chapter as defined in subsection (5)(e), in addition to other penalties provided in this chapter, may be assessed a civil penalty by the department of not more than $2,500 for each offense. However, farm applicators possessing a permit may not be assessed a civil penalty over $500 for the first offense. Assessment of a civil penalty may be made in conjunction with any other department warning, order, or administrative action authorized by this chapter.

(b) A civil penalty may not be assessed unless the person charged was given notice and opportunity for a hearing and an appeal pursuant to the Montana Administrative Procedure Act.

(c) (i) If after investigation the department determines that a major violation of this chapter has significantly harmed human life, welfare, or safety or affected agricultural commodities, livestock, or the environment in a manner that cannot be appropriately addressed by the penalties assessed in subsection (5)(a), the department may seek a civil penalty, not to exceed $25,000 for each offense, by filing a complaint in district court.

(ii) In addition to the civil penalty provided in subsection (5)(c)(i), a person who willfully commits a major violation of this chapter that results in significant harm to human life, welfare, or safety or to agricultural commodities, livestock, or the environment is guilty of a felony and shall, upon conviction, be fined not more than $50,000 or be imprisoned in the state prison for not more than 10 years, or both.

(d) In determining an appropriate penalty, the department shall consider the effect on the person's ability to continue in business, the gravity of the violation that occurred, the degree of care exercised by the offender, and whether significant harm resulted to human health, agricultural commodities, livestock, or the environment.

(e) A major violation of this chapter includes:

(i) misuse of a pesticide that results in proven exposure of humans, agricultural commodities, or livestock or results in proven harm to human health, agricultural commodities, livestock, or the environment. As used in this subsection (i), "misuse" means the use, handling, or release of a pesticide by a person in a manner inconsistent with the label or labeling or in violation of department pesticide application, storage, mixing, and loading rules or pesticide and container disposal rules.

(ii) selling of a restricted pesticide to a person not certified or authorized to purchase restricted pesticides;

(iii) use or sale of unregistered pesticides;

(iv) failure to maintain any individual pesticide application and sales records;

(v) using or selling pesticides without having obtained the required license or permit;

(vi) noncompliance with pesticide worker protection standards and labeling;

(vii) noncompliance with pesticide ground water and environmental protection agency endangered species standards and labeling;

(viii) noncompliance with pesticide or pesticide container disposal, labeling, or handling requirements and standards; or

(ix) reoccurrence of any identical violation of this chapter within 2 years of the first violation.

(f) If the department is unable to collect the civil penalty or if a person fails to pay all or a portion of the civil penalty as determined by the department, the department may recover that amount by action in the appropriate district court.

History: En. Sec. 34, Ch. 403, L. 1971; amd. Sec. 17, Ch. 462, L. 1977; R.C.M. 1947, 27-245; amd. Sec. 10, Ch. 184, L. 1981; amd. Sec. 9, Ch. 633, L. 1983; amd. Sec. 4, Ch. 189, L. 1995.

Cross-References

Injunctive relief, Title 27, ch. 19.

Misdemeanor — when no penalty specified, 46-18-212.

Part 4
Model Integrated Pest and Pesticide Management Safety Program

Part Cross-References

Duties of school districts, Title 20, ch. 6.

80-8-401. Short title. This part may be cited as the "Model Integrated Pest and Pesticide Management Safety Program Act".

History: En. Sec. 1, Ch. 177, L. 1993; amd. Sec. 11, Ch. 244, L. 2017.

80-8-402. Statement of policy. The legislature finds and declares that:

(1) the exposure of children to pesticides applied in and around schools can pose a potentially acute or chronic toxicological hazard to their health;

(2) infants and children can be especially vulnerable to pesticides, especially if pesticides are not properly applied or used;

(3) schools need to adopt pest management programs that minimize exposure of school children to pesticides and provide for alternative pest control methods; and

(4) the department shall prepare and distribute to each Montana school district a model integrated pest and pesticide management safety program that satisfies the provisions of this section.

History: En. Sec. 2, Ch. 177, L. 1993.

80-8-403. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of agriculture as provided for in 2-15-3001.

(2) "Director" means the director of agriculture as provided for in 2-15-3001.

(3) "School district" means a school district established according to Title 20, chapter 6.

History: En. Sec. 3, Ch. 177, L. 1993.

80-8-404. Model integrated pest and pesticide management safety program. (1) The department may develop a model integrated pest and pesticide management safety program for facilities under supervision, including but not limited to schools, day-care facilities, nursing homes, hospitals, and other education and health care facilities. The model programs must provide guidance and recommendations on management of pests and pesticides and on alternatives within a facility and on facility grounds.

(2) The model program guidelines and recommendations must include information on pests, alternative and pesticide control methods and their integration, environmental concerns, and protection of public health. Special information and recommendations for protecting the affected populations from exposure to pesticides and from the acute or chronic potential adverse health effects of pesticides must be emphasized. The department may periodically revise the model program guidelines, policies, and recommendations as new integrated pest, pesticide, or alternative management techniques and methods are developed and as new information on protecting the affected populations from pesticides is developed.

(3) The director may consult and obtain advice from pest and pesticide specialists, facility personnel, and the public on any aspect of the model integrated pest and pesticide management safety program.

History: En. Sec. 4, Ch. 177, L. 1993; amd. Sec. 12, Ch. 244, L. 2017.

80-8-405. Policymaking authority. The department may adopt policies and guidelines to implement this part.

History: En. Sec. 5, Ch. 177, L. 1993.

CHAPTER 9
COMMERCIAL FEEDS

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Part 1
General Provisions

80-9-101. *(Subsection (3)(b)(ii) effective on occurrence of contingency)* **Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "AOAC international" means the association of official analytical chemists.

(2) "Brand name" means any word, name, symbol, or device or any combination of them identifying the commercial feed of a licensee or registrant and distinguishing it from that of others.

(3) (a) "Commercial feed" means all materials or combinations of materials that are distributed or intended for distribution for use as feed or for mixing in feed, unless the materials are specifically excluded by law.

(b) The term includes the addition of hemp or a substance derived from hemp for use as feed or for mixing in feed for:

(i) a pet, specialty pet, or horse; or

(ii) for other livestock.

(c) The term does not include unmixed whole seeds and physically altered entire unmixed seeds when those seeds are not chemically changed or adulterated within the meaning of 80-9-204. The department may by rule exclude from this definition or from specific provisions of this chapter commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances when those commodities, compounds, or substances are not intermixed with other materials and are not adulterated within the meaning of 80-9-204.

(4) "Contract feeder" means a person who, as an independent contractor, feeds commercial feed to animals pursuant to a contract under which the commercial feed is supplied, furnished, or otherwise provided to that person and under which that person's remuneration is determined completely or in part by feed consumption, mortality, profits, or amount or quality of product.

(5) "Customer formula feed" means commercial feed that consists of a mixture of commercial feeds or feed ingredients, each batch of which is manufactured according to the specific instructions of the final purchaser.

(6) "Distribute" means to offer for sale, sell, exchange, or barter commercial feed or to supply, furnish, or otherwise provide commercial feed to a contract feeder.

(7) "Drug" means any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals, other than humans, and articles other than feed intended to affect the structure or function of the animal body.

(8) "Facility" means something that is built, installed, or established to serve a particular purpose.

(9) "Feed ingredient" means each of the constituent materials making up a commercial feed or a noncommercial feed.

(10) "Guarantor" means a person whose name and principal mailing address appear on the label and who guarantees the information contained on the label as required by 80-9-202. The person may or may not also be the manufacturer.

(11) "Hemp" means all parts and varieties of the plant Cannabis sativa L. containing no greater than 0.3% tetrahydrocannabinol.

(12) "Label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed or on the invoice or delivery slip with which a commercial feed is distributed.

(13) "Labeling" means all labels and other written, printed, or graphic matter upon a commercial feed, any of its containers, or its wrapper or accompanying the commercial feed.

(14) "Manufacture" means to grind, mix, blend, or further process a commercial feed.

(15) "Mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.

(16) (a) "Noncommercial feed" means all materials or combinations of materials that are used as feed or for mixing in feed and that are not intended for distribution, unless the materials are specifically excluded by law.

(b) The term does not include unmixed whole seeds and physically altered entire unmixed seeds when those seeds are not chemically changed or adulterated within the meaning of 80-9-204. The department may by rule exclude from this definition or from specific provisions of this chapter commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances when those commodities, compounds, or substances are not intermixed with other materials and are not adulterated within the meaning of 80-9-204.

(17) "Official sample" means a sample of feed taken by the department in accordance with the provisions of 80-9-301.

(18) "Percent" or "percentage" means percentage by weights.

(19) "Person" means an individual, partnership, corporation, or association.

(20) "Pet" means any domesticated animal normally maintained in or near the household of its owner.

(21) "Pet food" means any commercial feed prepared and distributed for consumption by pets.

(22) (a) "Pet treat" means any commercial feed intended for pets and specialty pets that is not intended to provide complete and balanced nutrition and is fed intermittently for training, reward, enjoyment, or other purposes. Pet treats are classified as a type of pet food and specialty pet food by the department.

(b) A pet treat intended for a cat or a dog that is manufactured in this state and does not contain any medication or drug or meat, poultry, fish, or their byproduct as an ingredient qualifies for certain licensing exemptions and limited labeling and registration requirements under this chapter.

(23) "Product name" means the name of the commercial feed that identifies it as to kind, class, or specific use.

(24) "Quantity statement" means the net weight or mass; net volume, either liquid or dry; or count.

(25) "Specialty pet" means any domesticated animal pet normally maintained in a cage or tank, including but not limited to gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes, and turtles.

(26) "Specialty pet food" means any commercial feed prepared and distributed for consumption by specialty pets.

(27) "Supplier" means a person who distributes commercial feed into Montana.

(28) "Ton" means a net weight of 2,000 pounds avoirdupois.

History: **En. Sec. 1, Ch. 356, L. 1973; R.C.M. 1947, 3-2025; amd. Sec. 12, Ch. 20, L. 1979; amd. Sec. 1, Ch. 396, L. 1999; amd. Sec. 1, Ch. 148, L. 2003; amd. Sec. 1, Ch. 37, L. 2005; amd. Sec. 1, Ch. 46, L. 2017; amd. Sec. 1, Ch. 365, L. 2019; amd. Sec. 1, Ch. 179, L. 2021.**

Compiler's Comments

Contingent Effective Date: Section 4(2), Ch. 179, L. 2021, provided: "(2) [Section 1(3)(b)(ii)] [80-9-101(3)(b)(ii)] is effective on the date that the director of the Montana department of agriculture certifies to the code commissioner that the food and drug administration has approved hemp or any substance derived from hemp as an approved additive or defined ingredient in animal food or medicated feed for livestock."

80-9-102. Administration. This chapter shall be administered by the Montana department of agriculture.

History: **En. Sec. 2, Ch. 356, L. 1973; R.C.M. 1947, 3-2026.**

80-9-103. Rules — adoption by department. (1) The department may adopt rules for commercial feeds and pet foods that are specifically authorized in this chapter and other reasonable rules necessary for the efficient enforcement of this chapter, including rules related to:

(a) the specific content of label directions and precautions for safe and effective use of commercial and customer formula feeds;

(b) definitions of feed ingredients and poisonous or deleterious substances;

(c) good manufacturing practices for commercial feeds containing medications or drugs;

(d) standards for viable weed seeds;

(e) format and content of annual statements of tonnage and distribution records required by 80-9-206(2);

(f) standards for establishing deficiency of a commercial feed based on laboratory testing;

(g) standards for establishing that a commercial feed is in violation because of a deficiency in any feed ingredient;

(h) procedures for the issuance and release of embargo orders and condemnation pursuant to 80-9-302; and

(i) procedures for implementing and administering the civil penalties under 80-9-303.

(2) Unless it determines that they are inconsistent with this chapter or are not appropriate to conditions that exist in this state, the department, in the interest of uniformity, shall adopt:

(a) the official definitions of feed ingredients and official feed terms adopted by the association of American feed control officials and published in the official publication of that organization; and

(b) any rules adopted under the Federal Food, Drug, and Cosmetic Act as long as the department has the authority under this chapter to adopt that rule.

(3) In adopting rules the department shall follow procedures prescribed in the Montana Administrative Procedure Act.

History: En. Sec. 10, Ch. 356, L. 1973; R.C.M. 1947, 3-2034; amd. Sec. 2, Ch. 396, L. 1999.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.
Department defined, 80-1-101.
Inspection fees — filing of annual statement, 80-9-206.
Related livestock rules — powers of Department of Livestock, 81-2-102.

80-9-104. Cooperation with other agencies. The department may cooperate with and enter into agreements with governmental agencies of this state, other states, agencies of the federal government, and private associations in order to carry out this chapter.

History: En. Sec. 14, Ch. 356, L. 1973; R.C.M. 1947, 3-2038.

80-9-105. Publications. The department may publish, in a form it considers proper, information concerning the sale of commercial feed, data on production and use, and the results of analysis of official samples of commercial feeds sold within the state as compared with the analysis guaranteed in the registration and on the label. The information concerning production and use of commercial feed may not disclose the operations of any person.

History: En. Sec. 15, Ch. 356, L. 1973; R.C.M. 1947, 3-2039; amd. Sec. 3, Ch. 396, L. 1999.

Part 2
Production and Distribution

80-9-201. Licenses and registration. (1) Except as provided in subsection (4)(b), a license is required of a facility or person:

(a) who manufactures commercial feed in this state;

(b) who distributes commercial feed in or into this state; or

(c) whose name appears on the label of a commercial feed as guarantor.

(2) (a) A separate license is required for each facility that manufactures commercial feed within this state or for each facility that distributes commercial feed in or into this state. A facility or person that manufactures, distributes, or is a guarantor for commercial feed must be licensed once annually pursuant to this section.

(b) (i) Except as otherwise provided in this subsection (2)(b)(i), all new applicants shall pay a nonrefundable fee of $100 each calendar year for a license for each facility. The department may by rule adjust the license fee to maintain adequate funding for the administration of this part. The fee may not be less than $100 a year or more than $110 a year.

(ii) Except as otherwise provided in this subsection (2)(b)(ii), license renewals received by the department prior to January 1 of each year must be accompanied by a nonrefundable renewal fee of $75 for each license. The department may by rule adjust the license fee to maintain adequate funding for the administration of this part. The fee may not be less than $75 a year or more than $85 a year.

(3) Applicants for licensure shall file with the department information on forms provided by the department, including the following:

(a) the applicant's name and place of business;

(b) the mailing address and physical location of the facility to be licensed;

(c) an indication of whether the facility to be licensed manufactures feed, distributes feed, or both; and

(d) an indication of whether or not the person applying for licensure is a guarantor.

(4) (a) A license granted under this section remains in force until the end of the calendar year for which it is issued or until cancelled by the licensee or by the department for cause. The department may collect a $25 late penalty fee for a license renewal application received after January 1 of any year. A license is nontransferable, and license fees are nonrefundable.

(b) A license is not required for a person who:

(i) distributes only pet food or specialty pet food; or

(ii) manufactures pet treats as defined in 80-9-101(22)(b) whose total annual sales do not exceed $25,000.

(5) A person who manufactures for distribution or who distributes commercial feed in this state shall, upon written request by the department, submit the following information regarding products distributed in this state:

(a) a list of feed products;

(b) all labeling, promotional material, and claims for any feed product;

(c) analytical methods for ingredients claimed or listed on a label, if the methods are not available from AOAC international; and

(d) replicated data performed by a reputable investigator whose work is recognized as acceptable by the department, verifying any claims for effectiveness of a feed product.

(6) (a) A person may not manufacture for distribution or distribute in this state a pet food, specialty pet food, or pet treat that has not been registered under this section by the manufacturer or the guarantor. Except as otherwise provided in subsection (6)(b), the application for registration must be accompanied by a nonrefundable fee of:

(i) $50 for each pet food or specialty pet food; or

(ii) $25 for each set of up to 20 individual pet treat products that meet the definition provided in 80-9-101(22)(b).

(b) The department may by rule adjust the registration fee to maintain adequate funding for the administration of this part. The fee may not be less than $50 a year or more than $60 a year for a pet food or specialty pet food and not less than $25 a year or more than an additional $10 a year added to the original assessed amount calculated in subsection (6)(a)(ii) for pet treats as defined in 80-9-101(22)(b).

(c) The registration of pet food, specialty pet food, and pet treats is for a period of 1 year starting January 1 and ending December 31 of each year.

(7) An applicant for registration of pet food, specialty pet food, or pet treats shall file with the department the following information:

(a) the applicant's name and address; and

(b) a complete standard list of all products being registered.

(8) The department may refuse registration of pet food, specialty pet food, or pet treats that is not in compliance with this chapter and may cancel any registration subsequently found to not be in compliance with this chapter. A registration may not be refused or cancelled unless the registrant has been given an opportunity to be heard before the department and to amend the application in order to comply with this chapter.

History: En. Sec. 3, Ch. 356, L. 1973; R.C.M. 1947, 3-2027; amd. Sec. 1, Ch. 36, L. 1985; amd. Sec. 1, Ch. 38, L. 1989; amd. Sec. 4, Ch. 396, L. 1999; amd. Sec. 2, Ch. 37, L. 2005; amd. Sec. 2, Ch. 46, L. 2017; amd. Sec. 2, Ch. 365, L. 2019; amd. Sec. 2, Ch. 179, L. 2021.

80-9-202. Labeling. (1) A commercial feed, except a customer formula feed, must be accompanied by a label containing:

(a) the quantity statement;

(b) the product name and any brand name under which the commercial feed is distributed;

(c) the guaranteed analysis stated in terms the department by rule determines are required to advise the user of the composition of the feed or to support claims made in the labeling. The substances or elements guaranteed must be determinable by laboratory methods such as the methods published by AOAC international. Pet treats as defined in 80-9-101(22)(b) are exempt from the guaranteed analysis requirement of this subsection (1)(c).

(d) the common or usual name of each ingredient used in the manufacture of the commercial feed. The department by rule may permit the use of a collective term for a group of ingredients that perform a similar function, or it may exempt commercial feeds or any group of them from this requirement of an ingredient statement if it finds that the statement is not required in the interest of consumers.

(e) the name and principal mailing address of the manufacturer, the person responsible for distributing the commercial feed, or the guarantor;

(f) adequate directions for use for all commercial feeds containing drugs. The department may by rule require directions for the use of other commercial feeds when necessary for their safe and effective use.

(g) precautionary statements that the department by rule determines are necessary for safe and effective use of the commercial feed.

(2) A customer formula feed must be accompanied by a label, invoice, delivery slip, or other shipping document containing:

(a) the name and address of the manufacturer or guarantor;

(b) the name and address of the purchaser;

(c) the date of delivery;

(d) the specific agreed to composition of the feed or a list of the ingredients, but not necessarily the percentage of each ingredient;

(e) adequate directions for use for all customer formula feed containing drugs. The department may by rule require directions for the use of other customer formula feeds when necessary for their safe and effective use.

(f) precautionary statements that the department by rule determines are necessary for safe and effective use of the feeds;

(g) in cases when a drug-containing product is used in a customer formula feed:

(i) the purpose of the drug in the form of a claim statement; and

(ii) the established name of each active drug ingredient and the level of each drug used in the final mixture, expressed in accordance with the association of American feed control officials model feed regulations, as published in that organization's official publication and adopted by department rule.

History: En. Sec. 4, Ch. 356, L. 1973; R.C.M. 1947, 3-2028; amd. Sec. 5, Ch. 396, L. 1999; amd. Sec. 3, Ch. 37, L. 2005; amd. Sec. 3, Ch. 365, L. 2019; amd. Sec. 3, Ch. 179, L. 2021.

80-9-203. Misbranded feed. A commercial feed is misbranded if:

(1) its labeling is false or misleading in any particular;

(2) it is distributed under the name of another commercial feed;

(3) it is not labeled as required in 80-9-202;

(4) it purports to be or is represented as containing a commercial feed ingredient, unless the commercial feed or feed ingredient conforms to any definition prescribed by rule of the department;

(5) any word, statement, or other information required by this chapter to appear on the label is not prominently placed there with a conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in terms which render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

History: En. Sec. 5, Ch. 356, L. 1973; R.C.M. 1947, 3-2029.

80-9-204. Adulterated feed. A commercial feed is adulterated if:

(1) it contains any poisonous or deleterious substance that may render it injurious to health. However, if the substance is not an added substance, the commercial feed may not be considered adulterated under this subsection if the quantity of the substance in the commercial feed does not ordinarily render it injurious to health.

(2) it contains any added poisonous, deleterious, or nonnutritive substance that is unsafe within the meaning of section 406 of the Federal Food, Drug, and Cosmetic Act, other than one that is a pesticide chemical in or on a raw agricultural commodity or a food additive;

(3) it is or it contains any food additive that is unsafe within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act;

(4) it is a raw agricultural commodity and it contains a pesticide chemical that is unsafe within the meaning of section 408(a) of the Federal Food, Drug, and Cosmetic Act. However, when a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section 408 of the Federal Food, Drug, and Cosmetic Act and that agricultural commodity has been processed by canning, cooking, freezing, dehydrating, or milling, the residue of the pesticide chemical remaining in or on the processed feed may not be considered unsafe if the residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of the residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity, unless the feeding of the processed feed is likely to result in the pesticide residue in the edible product of the animal, which is unsafe within the meaning of section 408(a) of the Federal Food, Drug, and Cosmetic Act;

(5) it is or contains any color additive that is unsafe within the meaning of section 721 of the Federal Food, Drug, and Cosmetic Act;

(6) it is or contains any new animal drug that is unsafe within the meaning of section 512 of the Federal Food, Drug, and Cosmetic Act;

(7) it consists in whole or in part of any filthy, putrid, or decomposed substance or if it is otherwise unfit for feed;

(8) it has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth or rendered injurious to health;

(9) it is in whole or in part the product of a diseased animal or of an animal that has died otherwise than by slaughter and that is unsafe within the meaning of section 402(a)(1) or (a)(2) of the Federal Food, Drug, and Cosmetic Act;

(10) its container is composed in whole or in part of any poisonous or deleterious substance that may render the contents injurious to health;

(11) it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with the regulation or exemption in effect pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act;

(12) any valuable constituents have been in whole or in part omitted or abstracted from the commercial feed or any less valuable substance substituted for the valuable constituent;

(13) its composition or quality falls below or differs from the composition or quality that is purported or represented to possess by its labeling;

(14) it contains a drug and the methods used in or the facilities or controls used for its manufacture, processing, or packaging do not conform to current good manufacturing practice rules adopted by the department to assure that the drug meets the requirement of this chapter as to safety and has the identity and strength and meets the quality and purity characteristics that it is represented to possess. In formulating these rules, the department shall adopt the current good manufacturing practice regulations for medicated feed premixes and for medicated feeds established under the Federal Food, Drug, and Cosmetic Act unless it determines that they are not appropriate to the conditions that exist in this state.

(15) it contains viable weed seeds in amounts exceeding the limits established by department rule.

History: En. Sec. 6, Ch. 356, L. 1973; R.C.M. 1947, 3-2030; amd. Sec. 6, Ch. 396, L. 1999.

80-9-205. Prohibitions. Subject to the penalty provisions in 80-9-303, a person may not:

(1) manufacture or distribute any commercial feed that is adulterated or misbranded;

(2) adulterate or misbrand a commercial feed;

(3) distribute agricultural commodities such as whole seed, hay, straw, stover, silage, cobs, husks, and hulls that are adulterated within the meaning of subsections (1) through (11) of 80-9-204;

(4) remove or dispose of a commercial feed in violation of an order under 80-9-302;

(5) fail to register or obtain a license in accordance with 80-9-201;

(6) violate 80-9-304;

(7) fail to pay inspection fees and file reports as required by 80-9-206;

(8) fail to submit a complete copy of labeling or a list of feed labels as required in 80-9-201;

(9) submit false information on an application for licensure or registration;

(10) knowingly use commercial feed or other feeds that are adulterated to feed animals that are intended for human consumption or to produce commodities for human consumption; or

(11) fail to comply with a lawfully issued order.

History: En. Sec. 7, Ch. 356, L. 1973; R.C.M. 1947, 3-2031; amd. Sec. 7, Ch. 396, L. 1999.

Cross-References

Violations — remedies, 80-9-301 through 80-9-303.

Prohibition of disclosure of information acquired under this chapter, 80-9-304.

80-9-206. Inspection fees — filing of annual statement. (1) An inspection fee must be paid on all commercial feeds, including customer formula feeds, except pet foods, specialty pet foods, and pet treats, distributed in this state as follows:

(a) (i) For commercial feed distributed into this state, the supplier has primary responsibility for paying inspection fees. However, the manufacturer is responsible for inspection fees if the supplier has not paid them.

(ii) For commercial feed distributed in this state, the manufacturer or guarantor are responsible for paying inspection fees.

(b) Except as otherwise provided in this subsection (1)(b), the inspection fee is 18 cents a ton. Inspection fees must be paid on each commercial feed, including customer formula feeds and feed ingredients that are defined as commercial feeds even though they are used in the manufacture of other commercial feeds. However, premixes prepared and used within a feed plant or transferred from one plant to another within the same organization are exempt. The department may by rule adjust the inspection fee to maintain adequate funding for the administration of this part. The fee may not be less than 18 cents a ton or more than 25 cents a ton.

(c) A person producing a commercial feed with a feed mixing plant at a feed lot or a poultry, swine, or dairy operation may not be required to pay inspection fees on the commercial feeds produced and used in the feeding operation at the site but is responsible for inspection fees on any commercial feed that person produces and distributes other than in that person's feeding operations at the site.

(d) Fees must be paid only if they total more than $5 in an annual reporting period.

(2) Each in-state guarantor or manufacturer who distributes commercial feed in this state and each supplier who distributes commercial feed into this state shall:

(a) file, not later than January 31 of each year, an annual statement setting forth the number of tons of commercial feeds distributed in this state during the preceding calendar year and, upon filing the statement, shall pay the inspection fee. Inspection fees that have not been remitted to the department on or before January 31 have a penalty fee of 10% or a minimum of $25, whichever is more, added to the amount due. The assessment of this penalty fee does not prevent the department from taking other action as provided in this chapter.

(b) keep those records that are necessary or are required by the department to indicate accurately the tonnage of commercial feed distributed in this state. The department may examine the records to verify statements of tonnage.

(c) make accurate and prompt reports as required. Failure to do so is sufficient cause for the department to cancel or refuse to reissue a license.

(3) A pet food or specialty pet food manufacturer, guarantor, or supplier or other person distributing pet food or specialty pet food is exempt from the reporting requirements of subsection (2).

History: En. Sec. 8, Ch. 356, L. 1973; R.C.M. 1947, 3-2032; amd. Sec. 2, Ch. 38, L. 1989; amd. Sec. 56, Ch. 16, L. 1991; amd. Sec. 8, Ch. 396, L. 1999; amd. Sec. 4, Ch. 37, L. 2005; amd. Sec. 3, Ch. 46, L. 2017; amd. Sec. 3, Ch. 339, L. 2017; amd. Sec. 4, Ch. 365, L. 2019.

80-9-207. Deposit of fees. (1) All fees collected for licenses, registration, and inspection must be deposited in the state treasury to the credit of the state special revenue fund for the purpose of administering this chapter, including the cost of equipment and facilities and the cost of inspecting, analyzing, and examining commercial feeds manufactured or distributed in this state and the cost of developing better analytical methods and means of evaluating the value or the potential toxic qualities of a feed.

(2) The department may direct the board of investments to invest funds from the state special revenue fund pursuant to the provisions of the unified investment program for state funds. The income from those investments must be credited to the proper department account in the state special revenue fund.

(3) The account in subsection (1) may receive funds from any source, including but not limited to gifts, grants, cost-share funds, or other funds designated for purposes consistent with this chapter.

(4) Any administrative civil penalties collected under 80-9-303 must be deposited in the Montana state university-Bozeman agricultural experiment station research account and may be used only for feed and animal nutrition research and education.

History: En. Sec. 9, Ch. 356, L. 1973; amd. Sec. 5, Ch. 16, L. 1977; R.C.M. 1947, 3-2033; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 9, Ch. 396, L. 1999.

Cross-References

State treasury fund structure, 17-2-102.

Unified investment program — general provisions, 17-6-201.

Part 3
Enforcement and Penalties

80-9-301. Enforcement — inspection — notice — sampling and analysis. (1) To enforce this chapter, the department upon presenting appropriate credentials may enter, at reasonable times or under emergency conditions, any factory, warehouse, or establishment within the state in which commercial feeds are manufactured, processed, packed, distributed, or held or enter any vehicle being used to transport or hold commercial feeds. The department may inspect at reasonable times and within reasonable limits and in reasonable manner any factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling found in a factory, warehouse, establishment, or vehicle. The inspection may include the verification of only those records and production and control procedures necessary to determine compliance with the good manufacturing practice rules adopted under 80-9-204(14).

(2) The department may enter premises to inspect, sample, and analyze noncommercial feeds and ingredients. The department shall provide at least 2 hours' notice prior to the inspection and must be accompanied by the owner or the owner's representative. However, the department's authority is limited to determining whether the feeds and ingredients are adulterated for commercial feed purposes as provided in 80-9-204. The department may issue orders or condemn noncommercial feeds in the same manner as provided for commercial feeds in 80-9-302.

(3) Each inspection must be commenced and completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle must be notified of the completion.

(4) If the officer or employee making the inspection of a factory, warehouse, or other establishment has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises, the officer or employee shall give the owner, operator, or agent in charge a receipt describing the sample obtained.

(5) To enforce this chapter the department may enter upon any public or private premises, including any vehicle of transport, during regular business hours to obtain samples and examine records relating to distribution of commercial feeds.

(6) Sampling and analysis must be conducted in accordance with methods published by AOAC international or with other generally recognized methods.

(7) The results of all analyses of official samples must be forwarded by the department to the person named on the label and to the purchaser. When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded, the department shall upon request within 30 days following receipt of the analysis furnish the registrant a portion of the official sample.

(8) The department, in determining for administrative purposes whether a commercial feed is deficient in any component, must be guided by the official sample obtained and analyzed as provided for in subsections (4) through (6).

(9) All official analyses must be performed cooperatively by the department and the agricultural experiment station at Montana state university-Bozeman. However, the department may arrange with other laboratories for specific analyses conducted as part of an official analysis.

History: En. Sec. 11, Ch. 356, L. 1973; R.C.M. 1947, 3-2035; amd. sec. 36, Ch. 308, L. 1995; amd. Sec. 10, Ch. 396, L. 1999; amd. Sec. 2, Ch. 148, L. 2003; amd. Sec. 5, Ch. 37, L. 2005.

80-9-302. Enforcement — embargo order — condemnation. (1) When the department has reasonable cause to believe any lot of commercial feed or other feed is in violation of this chapter or a rule adopted by the department, it may issue and enforce a written or printed embargo order requiring the person holding the commercial feed not to dispose of it in any manner until written permission is given by the department or the court. The department shall release the feed when this chapter and the rules of the department have been complied with. If compliance is not obtained within 30 days, the department may begin or, upon the request of the registrant, manufacturer, licensee, or person holding the commercial feed, shall begin proceedings for condemnation.

(2) Commercial feed not in compliance with this chapter or the rules of the department may be seized on complaint of the department to a district court in the area in which the commercial feed is located. If the court finds the commercial feed in violation of this chapter and orders its condemnation, it must be disposed of in any manner consistent with the quality of the commercial feed and state law. The disposition of the commercial feed may not be ordered by the court without first giving the owner or person from whom the feed was seized an opportunity to apply to the court for release of the commercial feed or for permission to process or relabel the commercial feed to bring it into compliance with this chapter.

History: En. Sec. 12, Ch. 356, L. 1973; R.C.M. 1947, 3-2036; amd. Sec. 11, Ch. 396, L. 1999; amd. Sec. 4, Ch. 46, L. 2017.

80-9-303. Violation — penalty — injunction — appeal. (1) A person who is convicted of violating this chapter or rules adopted under this chapter or who obstructs, prevents, or attempts to obstruct or prevent the department in the performance of its duty under this chapter is subject to one or both of the following penalties:

(a) a misdemeanor and shall be fined not less than $100 or more than $300 for the first violation and not less than $500 or more than $1,000 for a subsequent violation;

(b) an administrative civil penalty of not more than $1,000 for each offense. Assessment of a penalty under this subsection (1)(b) may be made in conjunction with any other warning, order, or administrative action by the department, under the authority of this part.

(2) The department may by rule establish a penalty matrix that schedules the types of penalties, the amounts for initial and subsequent offenses, and any other matters necessary for the administration of civil penalties under subsection (1)(b). In developing rules for determining appropriate civil penalties, the department shall consider the significance or gravity of a violation, the degree of care exercised by the offender, and the adverse impact or potential adverse impact or effects on animals or humans. Violations that are determined to be nonsignificant but that are repeated within a 2-year period may also subject a person to a civil penalty. The issuance of a civil penalty is subject to the contested case procedures of Title 2, chapter 4, part 6.

(3) Nothing in this chapter requires the department to prosecute, begin seizure proceedings, issue civil penalties, or issue an embargo order as a result of minor violations or when it believes the public interest will best be served by suitable notice of warning in writing.

(4) A county attorney to whom a violation is reported shall prosecute in a court of competent jurisdiction without delay. Before the department reports a violation for prosecution, an opportunity must be given the person to present the person's view to the department.

(5) The department may, in the district court of the first judicial district, apply for and the court may grant a temporary or permanent injunction restraining any person from violating this chapter or any rule adopted under this chapter notwithstanding the existence of other remedies at law. The injunction must be issued without bond.

(6) Any person adversely affected by an act, order, or ruling made pursuant to the provisions of this chapter may within 30 days seek judicial review in the district court of the first judicial district.

History: En. Sec. 13, Ch. 356, L. 1973; R.C.M. 1947, 3-2037(1) thru (5); amd. Sec. 12, Ch. 396, L. 1999.

Cross-References

Injunctive relief provisions, Title 27, ch. 19.

80-9-304. Disclosure of information prohibited. (1) A person who uses to that person's own advantage or reveals to persons other than officers of the department or to the courts when relevant in a judicial proceeding any information acquired under this chapter concerning any method, records, formulations, or processes which as a trade secret is entitled to protection is guilty of a misdemeanor and shall be fined not more than $300 or imprisoned for not more than 1 year, or both.

(2) The department may exchange information of a regulatory nature with the proper officials of the United States government or of other states who are similarly prohibited by law from revealing that information. The department may not release information obtained from officials of the United States government or of other states when those officials have determined and advised the department in writing that, based on the statutes governing those officials, the information is confidential.

History: En. Sec. 13, Ch. 356, L. 1973; R.C.M. 1947, 3-2037(6); amd. Sec. 13, Ch. 396, L. 1999.

Cross-References
Constitutional right to information, Art. II, sec. 9, Mont. Const.
Constitutional right of privacy, Art. II, sec. 10, Mont. Const.

CHAPTER 10
COMMERCIAL FERTILIZERS

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Chapter Cross-References
Department of Agriculture and special levies created, Art. XII, sec. 1, Mont. Const.
Fertilizer Advisory Committee, 2-15-1516.
Taxation provisions — tax exemption provisions, 15-6-201, 15-6-206, 15-6-207.
Taxation provisions — agricultural appraisal — valuation of land as agricultural, Title 15, ch. 7, part 2.
Land use — Realty Transfer Act — exceptions for agricultural lands
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Taxation provisions — individual income tax exceptions for farmers and ranchers, 15-30-2512.
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Agricultural vehicle provisions — exemption of farm implements from certain identification requirements, 61-3-431, 69-12-408.
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Agricultural liens — threshers' liens, 71-3-124; Title 71, ch. 3, part 8.
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Land use — land use planning boards, Title 76, ch. 1.
Land use — local regulation of subdivisions — agriculture-related provisions, 76-3-207, 76-3-401, 76-3-608.
Land use — state lands classification, Title 77, ch. 1, part 4.
Land use — conflicting or harmonious leasing of state lands for mining and agricultural purposes, 77-3-104, 77-3-120, 77-3-207.
Montana Agricultural Chemical Ground Water Protection Act, Title 80, ch. 15.

Part 1
General Provisions

80-10-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Brand" means a term, design, or trademark used in connection with one or several grades of commercial fertilizer.

(2) "Blending" means the physical mixing or combining, including mixing through simultaneous or sequential application, of any combination of materials to produce a uniform mixture of:

(a) one or more fertilizer materials with one or more filler materials; or

(b) two or more fertilizer materials.

(3) (a) "Commercial fertilizer" includes any substance containing one or more recognized plant nutrients that is used for its plant nutrient content and that is designed for use or claimed to have value in promoting plant growth, yield, or quality of the crop.

(b) Commercial fertilizer includes the following types of fertilizer:

(i) Bulk fertilizer is commercial fertilizer, dry or liquid, that is distributed in nonpackage form or in containers of greater than 1,000 pounds.

(ii) Fertilizer material is commercial fertilizer that either:

(A) contains important quantities of not more than one of the primary plant nutrients;

(B) has 85% or more of its plant nutrient content present in the form of a single chemical compound; or

(C) is derived from a plant or animal residue or byproduct or a natural material deposit that has been processed in such a way that its content of primary plant nutrients has not been materially changed except by purification and concentration.

(iii) Mixed fertilizer is commercial fertilizer, dry or liquid, that contains any combination or mixture of fertilizer materials.

(iv) Specialty fertilizer is commercial fertilizer, dry or liquid, that is distributed primarily for nonfarm use and includes commercial fertilizers used for research or experimental purposes.

(4) "Custom blend" means a fertilizer blended according to specifications provided to a blender in a soil test nutrient recommendation or to meet a specific consumer request prior to blending.

(5) "Deficiency" means the amount of nutrient found by analysis to be less than that guaranteed. Deficiency may result from a lack of nutrient ingredients or a lack of uniformity.

(6) "Distribute" means to offer for sale, sell, barter, or otherwise supply commercial fertilizers or soil amendments.

(7) "Grade" means the percentages of total nitrogen, available phosphate, and soluble potash stated in whole numbers in the same terms, order, and percentages as in the guaranteed analysis. Specialty fertilizers may be guaranteed in fractional units of less than 1% of total nitrogen, available phosphate, and soluble potash. Fertilizer materials, bonemeal, manures, and similar materials may be guaranteed in fractional units.

(8) "Guaranteed analysis" means the minimum percentage of plant nutrients as described in 80-10-102.

(9) "Investigational allowance" means an allowance for variations inherent in the taking, preparation, and analysis of an official sample of fertilizer.

(10) "Label" means the display of all written, printed, or graphic matter on a container or a statement accompanying a fertilizer or soil amendment.

(11) "Labeling" means all written, printed, or graphic matter on or accompanying any fertilizer or soil amendment and advertisements, brochures, websites, posters, and television and radio announcements used in promoting the sale of a fertilizer or soil amendment.

(12) "Licensee" means a person licensed under 80-10-202.

(13) "Local legislation" means but is not limited to any ordinance, motion, resolution, amendment, regulation, or rule adopted by a political subdivision.

(14) "Manufacture" means the formulation, mixing, blending, or further processing of commercial fertilizers or soil amendments.

(15) "Manufacturer" means a person who manufactures commercial fertilizer or soil amendments.

(16) "Official sample" means any sample of commercial fertilizer taken by the department and designated as official by the department.

(17) "Other ingredients" means nonsoil amending ingredients present in soil amendments.

(18) "Percent or percentage" means the percentage by weight.

(19) "Person" means an individual, partnership, association, firm, or corporation.

(20) "Political subdivision" means any local government entity, including but not limited to any city, county, town, or municipal corporation and any other corporate or political body that is responsible for government activities in a geographic area smaller than the state.

(21) "Primary nutrient" means the total nitrogen (N), available phosphate (P_2O_5), and soluble potash (K_2O).

(22) "Registrant" means the person who registers a commercial fertilizer or a soil amendment.

(23) (a) "Soil amendment" means any substance that is intended to improve the physical or chemical characteristics of soil.

(b) The term does not include commercial fertilizers, unmanipulated animal or vegetable manures, pesticides, and other ingredients that are exempted from the definition by rule.

(24) "Supplier" means a person who distributes fertilizers or soil amendments into Montana.

(25) "Ton" means a net weight of 2,000 pounds.

(26) "Unmanipulated animal or vegetable manures" means substances composed primarily of excreta, plant remains, or mixtures of those substances that have not been processed in any manner, including the addition of plant nutrients, drying, grinding, and other means.

History: En. 3-1714.2 by Sec. 1, Ch. 279, L. 1975; R.C.M. 1947, 3-1714.2; amd. Sec. 2, Ch. 197, L. 1985; amd. Sec. 2605, Ch. 56, L. 2009; amd. Sec. 4, Ch. 395, L. 2009; amd. Sec. 4, Ch. 339, L. 2017.

80-10-102. Guaranteed analysis. (1) Guaranteed analysis is the minimum percentage of plant nutrients claimed in the following order and form:

(a) The following plant nutrients must be guaranteed:

Total nitrogen (N) .....%

Available phosphate (P_2O_5) .....%

Soluble potash (K_2O) .....%

(b) For unacidulated mineral phosphatic materials and basic slag, bone, tankage, and other organic phosphatic materials, the total phosphate and degree of fineness may also be guaranteed.

(c) Guarantees for plant nutrients other than nitrogen, phosphorus, and potassium may be permitted or required by rules adopted by the department. The guarantees for other nutrients must be expressed in the form of the element. The sources of other nutrients, including but not limited to oxides, salt, and chelates, may be required to be stated on the application for registration and may be included on the label. Other beneficial substances or compounds, determinable by laboratory methods, also may be guaranteed by permission of the department. When any plant nutrients or other substances or compounds are guaranteed, they are subject to inspection and analysis in accordance with the methods and regulations prescribed by the department.

(d) Potential basicity or acidity expressed in terms of calcium carbonate equivalent in multiples of 100 pounds per ton must be guaranteed when required by regulation.

(2) Soil amendments must guarantee each soil amending ingredient and the total other ingredients in terms approved by the department or set forth in rules issued by the department. Soil amendments must also meet any other requirements established by department rule.

History: En. 3-1714.1 by Sec. 87, Ch. 218, L. 1974; Sec. 3-1714.1, R.C.M. 1947; amd. and redes. 3-1714.3 by Sec. 2, Ch. 279, L. 1975; amd. Sec. 18, Ch. 13, L. 1977; R.C.M. 1947, 3-1714.3; amd. Sec. 5, Ch. 395, L. 2009.

Cross-References

Penalties for deficiencies, 80-10-208.

80-10-103. Assessment to fund educational and experimental programs — collection. Money to fund 80-10-104 through 80-10-106 must be produced by an assessment of 75 cents per ton of fertilizer manufactured in or distributed into Montana. Collections must be made in accordance with procedures in 80-10-207 and payment is the responsibility of the in-state manufacturer or of the supplier if the fertilizer is not manufactured in Montana.

History: En. Sec. 1, Ch. 397, L. 1971; amd. Sec. 19, Ch. 13, L. 1977; R.C.M. 1947, 3-1729; amd. Sec. 3, Ch. 197, L. 1985; amd. Sec. 6, Ch. 395, L. 2009; amd. Sec. 1, Ch. 423, L. 2009.

80-10-104. Allocation of assessment. The assessment provided for in 80-10-103 must be collected by the department, and up to 1% must be retained by the department for costs of collection. The balance must be deposited in the state special revenue fund with 25% for use by the cooperative extension service and 75% for use by the agricultural experiment station in programs recommended by the fertilizer advisory committee provided for in 2-15-1516 and approved by the respective directors.

History: En. Sec. 2, Ch. 397, L. 1971; amd. Sec. 98, Ch. 218, L. 1974; R.C.M. 1947, 3-1730; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 423, L. 2009.

Cross-References

Departmental fees, 80-10-207.

80-10-105. Educational and experimental programs. (1) The moneys provided by 80-10-103 shall be used for comprehensive statewide educational and experimental programs aimed at optimum use of fertilizers for feed and food production.

(2) Major goals are to improve Montana's economy by providing farmers and ranchers the most accurate information possible about fertilizer use and soil management for greatest profits consistent with environmental protection on the many varied soil and climatic conditions of the state.

History: En. Sec. 3, Ch. 397, L. 1971; R.C.M. 1947, 3-1731.

80-10-106. Meetings and functions of advisory committee. The advisory committee shall meet a minimum of once each year with the directors of the cooperative extension service and the agricultural experiment station to perform the following functions:

(1) review the educational and experimental programs financed by this chapter;

(2) recommend needed programs and/or program adjustments;

(3) report to the Montana house and/or senate agriculture committees as requested.

History: En. Sec. 6, Ch. 397, L. 1971; R.C.M. 1947, 3-1734.

80-10-107 through 80-10-109 reserved.

80-10-110. Regulation of commercial fertilizers and soil amendments by political subdivision prohibited. (1) Except as provided in subsection (2), a political subdivision may not regulate the registration, packaging, labeling, sale, storage, distribution, use, or application of commercial fertilizers or soil amendments. A political subdivision may not adopt or continue in effect any local legislation relating to the registration, packaging, labeling, sale, storage, distribution, use, or application of commercial fertilizers or soil amendments. Local legislation adopted or continued in violation of this section is void and unenforceable.

(2) (a) A political subdivision may enter into a cooperative agreement with the department concerning the use and application of commercial fertilizers or soil amendments.

(b) Nothing in subsection (1) prevents a political subdivision from adopting or implementing zoning regulations or fire codes governing the physical location or siting of fertilizer manufacturing, storage, and sales facilities.

History: En. Sec. 1, Ch. 395, L. 2009.

Part 2
Licensing and Registration

80-10-201. Registration. (1) (a) Each brand and grade of fertilizer and each soil amendment except unmanipulated animal or vegetable manures must be registered by the manufacturer or the supplier on behalf of the manufacturer before distribution in this state. The application for registration must be submitted to the department on a form approved by the department and must be accompanied by:

(i) a nonrefundable fee of $20 per grade for each fertilizer and for each soil amendment;

(ii) a nonrefundable fee of $35 for each specialty fertilizer; and

(iii) a fee of $10 for each commercial and specialty fertilizer to be used for ground water protection, as required in 80-15-302(3).

(b) Upon approval, the department shall furnish a copy of the registration to the applicant. All registrations expire on December 31 of each year.

(2) (a) The application for registration must include:

(i) the brand and grade;

(ii) the guaranteed analysis;

(iii) the source of each plant food element guaranteed;

(iv) the name and address of the registrant;

(v) the net weight for packaged products;

(vi) an electronic copy of each label and labeling when requested by the department; and

(vii) analytical information on nutrient ingredients and nonnutrient ingredients as required by rule.

(b) The department shall require the applicant to furnish replicated data, performed by a reputable investigator whose work is recognized as acceptable by the director of the agricultural experiment station or the director's designee, verifying any claims for effectiveness or agricultural value of any fertilizer or soil amendment product that is not generally recognized as having the values claimed at the use rates recommended.

(3) A licensee is not required to register any brand and grade of commercial fertilizer that is already registered under this section by another person.

(4) Registration is not required for custom blends resulting from blending of registered products.

(5) A manufacturer or supplier may not register a product until full payment of the assessment fees provided for in 80-10-103 and 80-10-207 has been received by the department for each product.

History: En. 3-1715.1 by Sec. 3, Ch. 279, L. 1975; R.C.M. 1947, 3-1715.1(1), (2); amd. Sec. 4, Ch. 197, L. 1985; amd. Sec. 1, Ch. 27, L. 1989; amd. Sec. 1, Ch. 8, L. 2003; amd. Sec. 2606, Ch. 56, L. 2009; amd. Sec. 7, Ch. 395, L. 2009; amd. Sec. 5, Ch. 339, L. 2017.

Cross-References

Fee for agricultural chemical ground water protection, 80-15-302.

80-10-202. License required. A person may not distribute in this state any type of fertilizer or soil amendment, except unmanipulated animal or vegetable manures or specialty fertilizer, until a license to distribute has been obtained from the department for each facility distributing into this state and for each handling facility in this state. All new applicants shall pay a nonrefundable $75 fee for each license. All licenses expire on December 31 of each year and are subject to the following:

(1) The application for license must be on forms approved by the department.

(2) License renewals received by the department prior to January 1 of each year must be accompanied by a fee of $50 for each license.

(3) The department may collect a $25 late penalty for a license renewal received after December 31.

(4) Before distributing any commercial fertilizer or soil amendment into the state, a person must be licensed as a supplier.

History: En. 3-1715.1 by Sec. 3, Ch. 279, L. 1975; R.C.M. 1947, 3-1715.1(4); amd. Sec. 2, Ch. 27, L. 1989; amd. Sec. 8, Ch. 395, L. 2009; amd. Sec. 6, Ch. 339, L. 2017.

80-10-203. Fertilizer to be uniform. (1) The plant nutrient content of every brand and grade of commercial fertilizer shall remain uniform for the period of registration.

(2) The manufacturer or licensee shall at all times deliver a uniform grade of fertilizer or soil amendment. When two or more fertilizers are delivered in the same load, they shall be thoroughly and uniformly mixed unless they are in separate compartments.

History: En. 3-1715.1 by Sec. 3, Ch. 279, L. 1975; R.C.M. 1947, 3-1715.1(3), (5); amd. Sec. 7, Ch. 339, L. 2017.

80-10-204. Labeling. (1) All commercial fertilizer distributed in this state in containers must have affixed to the container a label setting forth in clearly legible and conspicuous form the following information:

(a) net weight;

(b) name and address of the registrant or guarantor;

(c) brand;

(d) grade, except if no primary nutrients are claimed;

(e) guaranteed analysis;

(f) directions for use of the fertilizer by the end user; and

(g) other requirements as established by rule.

(2) Any bin in the state in which commercial fertilizer is stored for distribution must have affixed to or printed on it a label setting forth in clearly legible and conspicuous form:

(a) the guaranteed analysis of the product in the bin; and

(b) other requirements established by rule.

(3) All commercial fertilizer delivered in this state in bulk, whether a manufactured grade or blended grade, must be accompanied by a clearly legible document that must be supplied to the purchaser at the time of delivery. The document must show:

(a) net weight;

(b) name and address of the licensee, registrant, or guarantor;

(c) guaranteed analysis or, on custom-blended fertilizer, the net weight and guaranteed analysis of each ingredient added; and

(d) other requirements as established by rule.

(4) (a) When distributed in containers, soil amendments must have a label affixed to the container setting forth in clearly legible and conspicuous form the following information:

(i) net weight;

(ii) name and address of the registrant or guarantor;

(iii) brand and product name;

(iv) guaranteed analysis;

(v) soil amending ingredients listed in the following form:

Name of ingredient (identify and list all).....%

Total other ingredients .....%

(vi) purpose of the product; and

(vii) other requirements, such as particle size, as established by rule.

(b) In the case of bulk shipments of soil amendments, the information required in subsection (4)(a) must be in clearly legible written or printed form, must accompany delivery, and must be supplied to the purchaser at the time of delivery.

History: En. 3-1716.1 by Sec. 4, Ch. 279, L. 1975; R.C.M. 1947, 3-1716.1; amd. Sec. 5, Ch. 197, L. 1985; amd. Sec. 2607, Ch. 56, L. 2009; amd. Sec. 9, Ch. 395, L. 2009; amd. Sec. 8, Ch. 339, L. 2017.

80-10-205. Misbranding and adulteration prohibited. (1) A person may not distribute a misbranded fertilizer or soil amendment. A fertilizer or soil amendment is misbranded if:

(a) its labeling is false or misleading in any manner;

(b) it is distributed under the name of another fertilizer or soil amendment product;

(c) it is not labeled as required in 80-10-204 and in accordance with rules prescribed under this chapter;

(d) adequate warning statements or directions for use that may be necessary to protect plant life, animals, humans, aquatic life, soil, or water are not shown on the label; or

(e) it purports to be or is represented as a fertilizer or soil amendment or is represented as containing a plant nutrient, fertilizer, or soil amendment ingredient unless that plant nutrient, fertilizer, or soil amendment conforms to the definition of identity, if any, prescribed by rule of the department. In adopting this type of rule, the department shall give consideration to

commonly accepted definitions and official fertilizer and soil amendment terms as issued by the association of American plant food control officials.

(2) A person may not distribute an adulterated fertilizer or soil amendment product. A fertilizer or soil amendment is adulterated if:

(a) it contains any deleterious or harmful substance in sufficient amount to render it injurious to beneficial plant life, animals, humans, aquatic life, soil, or water when applied in accordance with directions for use on the label;

(b) its composition falls below or differs from that which it is purported to possess by its labeling; or

(c) it contains crop seed or weed seed.

History: En. 3-1720.1 by Sec. 7, Ch. 279, L. 1975; R.C.M. 1947, 3-1720.1; amd. Sec. 10, Ch. 395, L. 2009.

80-10-206. Inspection, sampling, and analysis. (1) The department may sample, inspect, analyze, and test commercial fertilizers and soil amendments distributed in this state at a time and place and to an extent necessary to determine whether the commercial fertilizers or soil amendments are in compliance with this chapter. The department may enter any public or private premises during regular business hours in order to have access to commercial fertilizers or soil amendments subject to this chapter.

(2) The methods of analysis and sampling must be those adopted by the department from sources such as those of the association of official analytical chemists. The results of analysis, together with additional information the department considers advisable, must be transmitted promptly to the manufacturer and to the dealer or person in whose possession the product was sampled.

(3) The department, in determining whether any deficiency occurred in a commercial fertilizer or soil amendment, must be guided solely by the official sample obtained and analyzed as provided for in subsections (1) and (2). The department may arrange with other laboratories for specific analyses conducted as part of an official analysis.

(4) If on the basis of an inspection or the analysis of the official sample a commercial fertilizer or soil amendment is found to be subject to penalty or other legal action, the department shall forward to the responsible party notification of the violation. If no adequate evidence to the contrary is made available to the department, the report becomes official.

(5) Upon request, the department shall furnish to the responsible party a portion of any sample found subject to penalty or other legal action. The responsible party may challenge the department's determination of a violation within 30 days following the responsible party's receipt of the analysis. Upon receipt of the challenge, the department shall forward a portion of the remainder of the official sample to any recognized chemical laboratory of the responsible party's choice for analysis. If the results differ significantly from the department's analysis, the responsible party may request a referee analysis by a referee laboratory chosen by the department. Results of the referee analysis must be reported to the responsible party and to the department, and the referee analysis is considered official. If the department's initial analysis is sustained following a referee analysis, the responsible party that requested the referee analysis shall pay the costs of the referee analysis.

History: En. Sec. 7, Ch. 41, L. 1957; amd. Sec. 90, Ch. 218, L. 1974; amd. Sec. 6, Ch. 279, L. 1975; R.C.M. 1947, 3-1718; amd. sec. 36, Ch. 308, L. 1995; amd. Sec. 11, Ch. 395, L. 2009.

Cross-References

Violations — enforcement proceedings — judicial review, 80-10-303.

80-10-207. Fees. (1) (a) Each in-state manufacturer or out-of-state supplier shall pay to the department fees on all commercial fertilizer distributed in this state, except specialty fertilizers and unmanipulated animal or vegetable manures. Sales to manufacturers or exchanges between manufacturers are exempt. The fees are as follows:

(i) The department may by rule adjust the inspection fee to maintain adequate funding for the administration of this part. The fee may not be less than 20 cents per ton or more than 25 cents per ton. A change in fee becomes effective on the first day of a reporting period. All in-state manufacturers and out-of-state suppliers of nonexempt products must be given notice of a change in fees before the effective date.

(ii) The department may by rule adjust the anhydrous ammonia inspection fee to maintain adequate funding for the administration and enforcement of part 5 of this chapter. The fee may

not be less than 65 cents per ton or more than $1.30 per ton. A change in fee becomes effective on the first day of a reporting period. All in-state manufacturers and out-of-state suppliers of anhydrous ammonia must be given notice of a change in fees before the effective date of the fee adjustment.

(iii) The assessment fee prescribed in 80-10-103 must be used to fund educational and experimental programs as provided in 80-10-103 through 80-10-106.

(b) If fertilizer material or soil amendment is added to fertilizer for which a fee has been paid under subsection (1)(a), a fee is due only on the fertilizer material or soil amendment for which a fee has not been paid.

(c) Fees must be paid only if they total more than $5 in a reporting period.

(2) There must be paid to the department on all soil amendments distributed in this state an inspection fee of 10 cents per ton subject to the following provisions:

(a) sales to manufacturers or exchanges between them are exempt; and

(b) when less than 50 tons of a registered soil amendment is sold in a reporting period, no payment is due.

(3) (a) (i) Each licensee who distributes a soil amendment or commercial fertilizer, except specialty fertilizer and unmanipulated animal or vegetable manures, to an unlicensed person in this state shall file with the department on forms approved by the department a semiannual tonnage statement for the reporting periods ending June 30 and December 31. This tonnage statement must indicate the number of net tons of each commercial fertilizer and soil amendment distributed in this state during the 6-month period. The tonnage statement is due on or before the 30th day of the month following the close of each period 30 days after the last day of the reporting period. There are no fees associated with the semiannual tonnage statement.

(ii) Each in-state manufacturer and out-of-state supplier who distributes a soil amendment or commercial fertilizer in this state to a person regardless of license status, except specialty fertilizer and unmanipulated animal or vegetable manures, shall file with the department on forms approved by the department an inspection fee statement for each of the reporting periods ending June 30 and December 31. The inspection fee statement must indicate the number of net tons of each commercial fertilizer and soil amendment distributed in this state during the reporting period and to whom it was distributed. The report is due 30 days after the last day of the reporting period. The in-state manufacturer or out-of-state supplier shall pay the fees set forth in subsection (1) at that time.

(b) If the inspection fee statement required by subsection (3)(a) is not filed and the payment of fees is not made within 30 days after the end of the reporting period, a late fee of 10% on the amount due but not less than $25 must be assessed against the in-state manufacturer or out-of-state supplier. The amount of fees due constitutes a debt and becomes the basis of a judgment against the in-state manufacturer or out-of-state supplier.

(4) Except as provided in subsection (5), all fees collected for licenses, registration, and inspection and money collected as penalties must be deposited in the state treasury to the credit of the state special revenue fund for the purpose of administering this chapter, including the cost of equipment and facilities and the cost of inspecting, analyzing, and examining commercial fertilizer and soil amendments manufactured or distributed in this state. Reserve funds may be invested by the department with interest credited to the state special revenue fund.

(5) All fees collected under subsection (1)(a)(ii) must be deposited in the state treasury to the credit of the state special revenue fund, anhydrous ammonia account, for the administration and enforcement of part 5 of this chapter and the rules adopted under part 5. The department may direct the board of investments to invest the funds collected under subsection (1)(a)(ii) pursuant to the provisions of 17-6-201. The income from the investment must be deposited in the anhydrous ammonia account in the state special revenue fund.

History: **En. 3-1717.1 by Sec. 5, Ch. 279, L. 1975; R.C.M. 1947, 3-1717.1; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 6, Ch. 197, L. 1985; amd. Sec. 8, Ch. 310, L. 1985; amd. Sec. 3, Ch. 27, L. 1989; amd. Sec. 7, Ch. 220, L. 1995; amd. Sec. 2, Ch. 8, L. 2003; amd. Sec. 12, Ch. 395, L. 2009; amd. Sec. 9, Ch. 339, L. 2017.**

Cross-References

State treasury fund structure, 17-2-102.

Assessments to fund educational and experimental programs — collection, 80-10-103.

Anhydrous ammonia defined, 80-10-502.

80-10-208. Penalties. (1) A penalty of two times the commercial value of the deficiency, as determined by the retail price based on a semiannual state survey, may be assessed:

(a) if the analysis shows that a commercial fertilizer is deficient in one or more of its guaranteed primary nutrients beyond the investigational allowance as established by regulation; or

(b) if the overall index value of the fertilizer is below the level established by regulation.

(2) When a commercial fertilizer is subject to a penalty under both subsections (1)(a) and (1)(b), the larger penalty applies.

(3) Deficiencies beyond the investigational allowances as established by regulation in any other constituent covered under 80-10-102(1)(b), (1)(c), and (1)(d) that the registrant is required to or may guarantee may be evaluated, and penalties may be assessed at two times the commercial value of the deficiency as determined by the retail price based on a semiannual state survey.

(4) Nothing contained in this section prevents any person from appealing the department's decision to a court of competent jurisdiction.

(5) All penalties assessed under this section must be paid to the consumer of the lot, not to exceed 100 tons, of commercial fertilizer represented by the sample analyzed within 3 months after the date of notice from the department to the responsible party. If at the end of the 3-month period the consumer cannot be found, receipts must be taken and promptly forwarded to the department for deposit in the state special revenue fund as provided in 80-10-207.

(6) If the department cannot reasonably determine the lot size, then the lot size is considered to be 2 tons for the purposes of calculating the commercial value of the deficiency.

(7) A deficiency in an official sample of mixed fertilizer that results from nonuniformity is not distinguishable from a deficiency to actual plant nutrient shortage and is subject to official action.

History: En. 3-1726.1 by Sec. 13, Ch. 279, L. 1975; R.C.M. 1947, 3-1726.1; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 13, Ch. 395, L. 2009.

80-10-209. Publications. The department may publish by electronic or other means annual information concerning the sales of commercial fertilizers and soil amendments, together with data on their production and use as it considers advisable, and may report the results of the analyses based on official samples of commercial fertilizers and soil amendments sold in this state.

History: En. Sec. 11, Ch. 41, L. 1957; amd. Sec. 92, Ch. 218, L. 1974; amd. Sec. 9, Ch. 279, L. 1975; R.C.M. 1947, 3-1722; amd. Sec. 14, Ch. 395, L. 2009.

80-10-210. Licensee reports — confidentiality — inspection — failure to file. (1) Information contained in the reports required by 80-10-207(3) shall be held confidential by the department. Summary data published by the department shall be in a form that will not disclose details of any operation or business.

(2) The department may inspect and audit, during normal business hours, each licensee's records for the purpose of verifying tonnage reports.

(3) Failure to file an accurate report constitutes a violation of this chapter and may be punished by fine, revocation of license, or both.

History: En. 3-1721.1 by Sec. 8, Ch. 279, L. 1975; R.C.M. 1947, 3-1721.1; amd. Sec. 13, Ch. 20, L. 1979.

80-10-211. Cancellation or refusal of registration or licenses. (1) The department may cancel the registration of any commercial fertilizer or soil amendment and may refuse to register any commercial fertilizer or soil amendment upon satisfactory evidence that the registrant has used fraudulent or deceptive practices in the evasion or attempted evasion of this chapter or any rules adopted under it. However, a registration may not be revoked or refused until the registrant is given the opportunity to amend the application or correct other practices.

(2) The department may cancel any license or refuse to license any person when it has satisfactory evidence that the person has used fraudulent or deceptive practices in the evasion or attempted evasion of this chapter or any rules adopted under it. However, a license may not be revoked or refused until the person involved is given the opportunity to appear for a hearing by the department.

History: En. Sec. 13, Ch. 41, L. 1957; amd. Sec. 6, Ch. 43, L. 1963; amd. Sec. 94, Ch. 218, L. 1974; amd. Sec. 11, Ch. 279, L. 1975; R.C.M. 1947, 3-1724; amd. Sec. 2608, Ch. 56, L. 2009.

80-10-212. Exchanges between manufacturers. Nothing in this chapter shall be construed to restrict or avoid sales or exchanges of commercial fertilizers or soil amendment to each other by importers, manufacturers, or manipulators who mix fertilizer materials for sale or as preventing the free and unrestricted shipments of commercial fertilizer or soil amendment to manufacturers or manipulators who have registered their brands and grades or licensed their facilities as required by the provisions of this chapter.

History: En. Sec. 17, Ch. 41, L. 1957; amd. Sec. 15, Ch. 279, L. 1975; R.C.M. 1947, 3-1728.

Part 3
Enforcement

80-10-301. Rules — adoption by department. (1) The department may adopt those rules for commercial fertilizer and soil amendment which are specifically authorized in this chapter and those other reasonable rules necessary for the efficient enforcement of this chapter.

(2) In adopting rules the department shall follow procedures prescribed in the Montana Administrative Procedure Act.

History: En. 3-1723.1 by Sec. 10, Ch. 279, L. 1975; R.C.M. 1947, 3-1723.1.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

80-10-302. Enforcement — embargo order — condemnation. (1) When the department has reasonable cause to believe any lot of commercial fertilizer or soil amendment is in violation of this chapter or a rule adopted by the department, it may issue and enforce a written or printed embargo order requiring the person holding the commercial fertilizer or soil amendment not to dispose of it in any manner until written permission is granted by the department or the court. The department shall release the product when this chapter and the rules of the department have been complied with. If compliance is not obtained within 30 days, the department may begin or, upon the request of the registrant or the person holding the product, shall begin proceedings for condemnation.

(2) Commercial fertilizer or soil amendment not in compliance with this chapter or the rules of the department may be seized on complaint of the department to a district court in the area in which the product is located. If the court finds the product in violation of this chapter and orders its condemnation, the fertilizer or amendment shall be disposed of in any manner consistent with the quality of the product and state law. The disposition of the product may not be ordered by the court without first giving the owner or person from whom the product was seized an opportunity to apply to the court for release of the product or for permission to process or relabel the product to bring it into compliance with this chapter.

History: En. 3-1725.1 by Sec. 12, Ch. 279, L. 1975; R.C.M. 1947, 3-1725.1.

80-10-303. Violations — enforcement proceedings — judicial review. (1) If it appears from the examination of commercial fertilizer or from the inspection of an anhydrous ammonia facility that this chapter or the rules adopted under this chapter have been violated, the department shall give notice of the violations to the registrant, licensee, or possessor from whom the sample was taken. A person notified must be given an opportunity to be heard under rules of the department. If it appears after a hearing, either in the presence or absence of the person notified, that this chapter or rules issued under this chapter have been violated, the department may certify the facts to the proper prosecuting attorney.

(2) A person who violates this chapter or the rules adopted under this chapter or who obstructs, prevents, or attempts to prevent the department from performing its duty may be fined not less than $300 or more than $500 for the first violation and not less than $300 or more than $1,000 for a subsequent violation. In all actions under this chapter involving the composition of a lot of commercial fertilizer, a certified copy of the official analysis of the department is prima facie evidence of the composition.

(3) This chapter does not require the department to report for prosecution or for the beginning of seizure proceedings minor violations of this chapter when it believes that the public interest will be best served by a suitable notice of warning in writing.

(4) A prosecuting attorney to whom a violation is reported shall prosecute the violator in a court of competent jurisdiction without delay.

(5) The department may apply for and the court may grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule adopted under the chapter notwithstanding the existence of other remedies at law. The injunction must be issued without bond.

(6) If an in-state manufacturer or supplier fails to pay a fee required under 80-10-207, the manufacturer or supplier may be fined an amount up to $1,000 or twice the fee that should have been paid, whichever is higher. If a supplier fails to obtain a license as required in 80-10-202, the supplier may be assessed a civil penalty of $500 for each reporting period that the supplier fails to be licensed, in addition to any other amounts owed to the state.

(7) If a person adversely affected by an act, order, or ruling made by the department under this chapter is not entitled to a hearing before the department to determine the person's rights, the person may within 45 days sue in the district court of any county where the alleged violation giving rise to the department's act, order, or ruling occurred for a new trial of the issues bearing upon the act, order, or ruling. After the trial the court may issue and enforce those orders, judgments, or decrees that it considers proper, just, and equitable.

History: **En. Sec. 16, Ch. 41, L. 1957; amd. Sec. 2, Ch. 55, L. 1965; amd. Sec. 97, Ch. 218, L. 1974; amd. Sec. 14, Ch. 279, L. 1975; R.C.M. 1947, 3-1727; amd. Sec. 9, Ch. 310, L. 1985; amd. Sec. 2609, Ch. 56, L. 2009; amd. Sec. 15, Ch. 395, L. 2009; amd. Sec. 10, Ch. 339, L. 2017.**

Cross-References

Contested case defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Injunctive relief provisions, Title 27, ch. 19.

Anhydrous ammonia facility defined, 80-10-502.

Part 4 reserved

Part 5
Anhydrous Ammonia Facilities

80-10-501. Short title. This part shall be known and may be cited as the "Anhydrous Ammonia Facilities Safety Act".

History: **En. Sec. 1, Ch. 310, L. 1985.**

80-10-502. Definitions. As used in this part, the following definitions apply:

(1) "Anhydrous ammonia" means a compound formed by a combination of two gaseous elements, nitrogen and hydrogen, in the proportion of one part nitrogen to three parts hydrogen by volume, which compound is in either gaseous or liquid form and is used primarily as fertilizer.

(2) "Anhydrous ammonia facility" or "facility" means any building, tank, or system of equipment used for processing, storing, or distributing anhydrous ammonia and includes all appurtenances to such building, tank, or system.

History: **En. Sec. 2, Ch. 310, L. 1985.**

80-10-503. Rulemaking authority and requirements. (1) The department shall adopt rules for the design, construction, repair, alteration, location, installation, and operation of anhydrous ammonia facilities. The rules must be in substantial conformity with nationally recognized safety standards for the storage and handling of anhydrous ammonia. The rules must require the owner to place the owner's name and phone number on the owner's anhydrous ammonia tank or tanks. The department may adopt additional rules necessary for the protection and safety of persons employed in anhydrous ammonia facilities, persons using anhydrous ammonia, and the public.

(2) The rules must include a provision under which new or existing facilities may apply for a temporary or permanent variance from any requirement of the rules. The rules must provide criteria for granting or denying a variance request and must provide for written notice and public hearing on any variance request.

(3) The department shall coordinate its rulemaking activities with other executive branch agencies and departments by providing them with timely information on the adoption of the rules, inviting and encouraging their participation, giving due weight and consideration to their comments and testimony, and coordinating interdepartmental meetings on matters pertaining to the adoption of the rules.

History: **En. Sec. 3, Ch. 310, L. 1985; amd. Sec. 1, Ch. 334, L. 2005; amd. Sec. 2610, Ch. 56, L. 2009.**

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

80-10-504 and 80-10-505 reserved.

80-10-506. Preexisting facilities. Any facility in operation prior to the adoption of rules under 80-10-503 that is not in compliance with the rules must be allowed to continue in operation unless the department, after inspection and written notice to the owner or operator, makes a determination that the facility presents a safety hazard to employees, other persons using the facility, or the public.

History: En. Sec. 4, Ch. 310, L. 1985.

80-10-507. Variance. A person who owns or controls a facility may request in writing from the department a variance, which is an exemption or partial exemption from any rule governing the design, construction, repair, alteration, location, installation, or operation of a facility.

History: En. Sec. 5, Ch. 310, L. 1985.

80-10-508. Enforcement. This part must be enforced as provided in 80-10-303.

History: En. Sec. 6, Ch. 310, L. 1985.

80-10-509. Funding. Administration and enforcement of the provisions of this part and the rules adopted under 80-10-503 must be funded through expenditures of the anhydrous ammonia account established under 80-10-207(5).

History: En. Sec. 7, Ch. 310, L. 1985.

80-10-510. Terminated. Sec. 6. Ch. 334, L. 2005.

History: En. Sec. 2, Ch. 334, L. 2005.

CHAPTER 11
MARKETING

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Chapter Cross-References

Department of Agriculture and special levies created, Art. XII, sec. 1, Mont. Const.
Montana Wheat and Barley Committee, 2-15-3002.
Montana Agriculture Development Council, 2-15-3015.
County agricultural and livestock services, 7-21-3201 through 7-21-3203.
Public markets, Title 7, ch. 21, part 33.
City to weigh and inspect grain and hay, 7-21-4203.
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Weight and measure of berries and small fruits, 30-12-408.
Cooperative agricultural associations, Title 35, ch. 16.
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Montana Food, Drug, and Cosmetic Act — when food adulterated, Title 50, ch. 31, part 1; 50-31-202.

Agricultural vehicle provisions — exemption of farm implements from certain identification requirements, 61-3-431, 69-12-408.
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Agricultural vehicle provisions — slow-moving vehicles — equipment requirements, 61-9-415.
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Land use — relocation of power lines upon installation of agricultural improvements — sprinkler irrigation systems, Title 69, ch. 4, part 4.
Grain and commodity storage and transportation, Title 69, ch. 14, part 9.
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Part 1
Agricultural Marketing and Transportation

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Agricultural vehicle provisions — slow-moving vehicles — equipment requirements, 61-9-415.
Agricultural vehicle provisions — special fees for certain farm vehicles, 61-10-206.

80-11-101. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:
(1) "Agricultural products" means crops, livestock, and livestock products.
(2) "Marketing" means all activities involved in getting agricultural products from the producer to the consumer and includes transportation, processing, and distribution.
History: En. Sec. 2, Ch. 330, L. 1969; Sec. 3-117, R.C.M. 1947; amd. and redes. 3-3002 by Sec. 6, Ch. 218, L. 1974; R.C.M. 1947, 3-3002.

80-11-102. Intent of legislature. It is the intent of the legislature that the department of agriculture coordinate marketing from the initial producer to the consumer and reduce marketing cost by assisting both producer and industry to find ways to more efficiently market their products. The department shall also endeavor to develop new and improved systems of marketing which will result in the stabilization and improvement of returns for industry and the producer. It shall work with farm leaders, farmer cooperatives, processors, wholesalers, retailers, representatives of the transportation industry, consumer groups, and others as a means of correcting marketing inefficiencies or eliminating restrictions.
History: En. Sec. 1, Ch. 330, L. 1969; Sec. 3-116, R.C.M. 1947; amd. and redes. 3-3001 by Sec. 5, Ch. 218, L. 1974; R.C.M. 1947, 3-3001.

80-11-103. Department's marketing duties. The department shall:
(1) keep abreast of research results in the subject matter area of marketing;
(2) coordinate work with local, state, and national planning groups and other interested parties in helping them identify major problem areas and needs in marketing;
(3) develop and carry out appropriate action programs that will result in significant improvements being made by those people concerned with problems of marketing;
(4) coordinate efforts with representatives of other agencies or organizations or persons who are concerned with related programs;
(5) investigate the costs of marketing;

(6) gather and disseminate information concerning supply, demand, favorable marketing information, prevailing prices, and changes in marketing movements, practices, and rates, including common and cold storage of food products;

(7) promote, assist, and encourage the organization and operation of cooperative and other associations and organizations for improving the relations and services among producers, distributors, and consumers of food products;

(8) investigate the practice and methods concerning the marketing of agricultural products;

(9) act as mediator or arbitrator, when invited, in a controversy or issue that may arise between producers and distributors;

(10) assist producers and distributors in the economical and efficient distribution of agricultural products at fair prices;

(11) appear and be heard at any hearing involving agricultural marketing affecting Montana; and

(12) award and distribute grants from the agricultural transportation enhancement account pursuant to 80-11-105 to enhance the transportation of agricultural goods and to meet the purposes of Title 7, chapter 14, part 11.

History: En. Sec. 4, Ch. 330, L. 1969; Sec. 3-119, R.C.M. 1947; amd. and redes. 3-3003 by Sec. 7, Ch. 218, L. 1974; R.C.M. 1947, 3-3003; amd. Sec. 3, Ch. 564, L. 2021.

Cross-References

Department defined, 80-1-101.

80-11-104. Cooperation of state agencies. All agencies of the state which participate in marketing shall cooperate with and assist the department.

History: En. Sec. 8, Ch. 330, L. 1969; Sec. 3-123, R.C.M. 1947; amd. and redes. 3-3004 by Sec. 8, Ch. 218, L. 1974; R.C.M. 1947, 3-3004.

80-11-105. Agricultural transportation enhancement account. (1) There is an agricultural transportation enhancement account in the state special revenue fund established in 17-2-102.

(2) Any state funds distributed by the department of agriculture must be matched at a rate of 1 to 1, with $1 in state funds to $1 in local funds.

History: En. Sec. 1, Ch. 564, L. 2021.

Part 2
Wheat and Barley Research and Marketing

80-11-201. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Commercial channels" means the sale of wheat or barley for any use when sold to any commercial buyer, dealer, processor, cooperative, or to any person, public or private, who resells any wheat or barley or product produced from wheat or barley.

(2) "Committee" means the Montana wheat and barley committee provided for in 2-15-3002.

(3) "First purchaser" means any person, public or private corporation, association, or partnership buying, accepting for shipment, or otherwise acquiring the property in or to wheat or barley from a grower and shall include a mortgagee, pledgee, lienor, or other person, public or private, having a claim against the grower, where the actual or constructive possession of such wheat or barley is taken as part payment or in satisfaction of such mortgage, pledge, lien, or claim.

(4) "Grower" means any landowner personally engaged in growing wheat or barley, a tenant of the landowner personally engaged in growing wheat or barley, or both the owner and the tenant jointly; and includes a person, partnership, association, corporation, cooperative, trust, sharecropper, and any and all other business units, devices, and arrangements.

(5) "Sale" includes any pledge or mortgage of wheat or barley after harvest to any person, public or private.

History: En. Sec. 4, Ch. 314, L. 1967; amd. Sec. 109, Ch. 218, L. 1974; amd. Sec. 2, Ch. 71, L. 1975; R.C.M. 1947, 3-2904; amd. Sec. 1, Ch. 630, L. 1983; amd. Sec. 2, Ch. 48, L. 1987.

80-11-202. Declaration of policy. In the presence of the facts that wheat and barley are the principal grain crops produced in Montana and as such are agricultural resources of the first magnitude in the economy of the inhabitants of Montana, prime factors in the production of wealth and the development and stabilization of property values and of activities and enterprises that are bases and sources of important contributions by taxation to the public revenues, and that Montana wheat and barley are commodities that enter a world market highly competitive in character, it is hereby declared to be the public policy of the state of Montana to protect and foster the health, prosperity, and general welfare of its people by encouraging and promoting intensive, scientific, and practical research into all phases of wheat and barley culture and production, marketing, and use and into the development of markets for wheat and barley grown in Montana by the department.

History: En. Sec. 2, Ch. 314, L. 1967; amd. Sec. 108, Ch. 218, L. 1974; amd. Sec. 1, Ch. 71, L. 1975; R.C.M. 1947, 3-2902; amd. Sec. 3, Ch. 507, L. 1991.

80-11-203. Compensation — per diem. Members of the committee may not receive a salary but are entitled to compensation as provided in 2-15-122 for each day they are engaged in the transaction of official business and must be reimbursed for travel expenses, as provided in 2-18-501 through 2-18-503, incurred while on official business.

History: En. Sec. 6, Ch. 314, L. 1967; amd. Sec. 110, Ch. 218, L. 1974; amd. Sec. 3, Ch. 71, L. 1975; amd. Sec. 5, Ch. 439, L. 1975; R.C.M. 1947, 3-2906; amd. Sec. 2, Ch. 277, L. 1983; amd. Sec. 3, Ch. 48, L. 1987; amd. Sec. 9, Ch. 700, L. 1989; amd. Sec. 3, Ch. 30, L. 2015.

80-11-204. Election of presiding officer — time of meetings. At the first meeting of the administrative committee, it shall elect a presiding officer from among its members. The committee shall meet at least once every 3 months and at other times as called by the presiding officer or by any three members of the committee.

History: En. Sec. 8, Ch. 314, L. 1967; R.C.M. 1947, 3-2908; amd. Sec. 2611, Ch. 56, L. 2009.

80-11-205. Powers of the committee. (1) The committee may:

(a) adopt rules necessary for the administration of this part;

(b) provide, through the department, for the enforcement of this part;

(c) provide for the conduct of research into the production, marketing, and uses of wheat and barley;

(d) enter into contracts or agreements with units of the Montana university system and other local, state, or national organizations, public or private, for the purposes of improving wheat or barley quality, increasing the efficiency of production, developing marketing knowledge, developing markets, determining new uses for wheat or barley, developing alternative crops for wheat or barley, and carrying out all research and marketing contemplated by this part. The committee may not establish research units or agencies of its own.

(2) Researchers or professional or scientific personnel may not be employed to carry out this part except as provided in subsection (1)(d) of this section.

(3) None of the powers or duties provided for in this part permit participation in state or federal political action by the committee.

History: En. Sec. 9, Ch. 314, L. 1967; amd. Sec. 111, Ch. 218, L. 1974; amd. Sec. 4, Ch. 71, L. 1975; R.C.M. 1947, 3-2909; amd. Sec. 2, Ch. 630, L. 1983; amd. Sec. 4, Ch. 507, L. 1991.

80-11-206. Maximum annual assessment on wheat and barley grown, delivered, or stored. (1) There is an annual assessment of not more than 40 mills per bushel on all wheat and not more than 60 mills per hundredweight on all barley grown, delivered, or stored in the state of Montana and sold through commercial channels.

(2) The assessment is levied and imposed:

(a) in the case of a sale of wheat or barley, at the time of first sale of any wheat or barley by a seller, and must be collected by the first purchaser of the wheat or barley from the seller at the time of each settlement for wheat or barley purchased;

(b) in the case of a pledge or mortgage of wheat or barley as security for a loan under any federal price support program other than the commodity credit corporation and must be collected by deducting the amount of the assessment from the proceeds of the loan at the time the loan is made by the agency or person making the loan; or

(c) in the case of wheat or barley pledged under the federal commodity credit corporation, and the assessment must be collected at the time of purchase, not at the time a lease or loan is made under the program.

(3) The assessment levied under the provisions of this part must be deducted and collected as provided by this part, whether the wheat or barley is stored in this or any other state. The assessment attaches to each transaction, but a seller is not subject to assessment more than once irrespective of the number of times the wheat or barley is the subject of a sale, pledge, mortgage, or other transaction. The assessment is imposed and attaches on the initial sale, pledge, mortgage, or other transaction in which the wheat or barley seller parts with title to the wheat or barley or creates some interest in the wheat or barley in a pledgee, mortgagee, or other person.

History: En. Sec. 11, Ch. 314, L. 1967; amd. Sec. 1, Ch. 201, L. 1971; amd. Sec. 5, Ch. 71, L. 1975; R.C.M. 1947, 3-2911; amd. Sec. 1, Ch. 530, L. 1979; amd. Sec. 1, Ch. 31, L. 1983; amd. Sec. 1, Ch. 51, L. 1993; amd. Sec. 1, Ch. 576, L. 1993; amd. Sec. 1, Ch. 270, L. 2003; amd. Sec. 1, Ch. 84, L. 2019.

80-11-207. Delivery of invoice — form — filing of sworn statement — payment of assessment — refund. (1) The purchaser of the wheat or barley at the time of sale or the pledgee, mortgagee, or other lender at the time of the loan or advance shall give separate invoices for each purchase, delivery, or storage charge to the seller or person delivering the wheat or barley or entering it into storage. The invoices must be on forms approved by the department and must show:

(a) the name and address of the seller or of the person delivering the wheat or barley or entering it into storage;

(b) the name and address of the purchaser or the lender;

(c) the number of bushels of wheat or hundredweights of barley sold, mortgaged, pledged, delivered, or stored;

(d) the date of the purchase, mortgage, pledge, delivery, or storage and the amount of assessment collected and remitted to the department.

(2) The purchaser, mortgagee, or pledgee shall file with the department, on forms prescribed by the department, within 20 days after the end of a month in which a purchaser purchases wheat or barley or in which a lender makes a loan or advance on wheat or barley, a sworn statement of the number of bushels of wheat or hundredweights of barley purchased in Montana, the number of bushels of wheat or hundredweights of barley mortgaged or pledged or otherwise transferred or liened as security for a loan during the preceding calendar month, or the number of bushels of wheat or hundredweights of barley delivered or stored. At the time the sworn statement is filed, the purchaser or lender shall pay to the department the assessment provided for in 80-11-206 for deposit in the wheat and barley account in the state special revenue fund.

(3) The statement referred to in subsections (1) and (2) must be legibly written and entirely free of any corrections or erasures. A person may not alter any part of a statement.

(4) After 30 days and before 90 days following the deduction of the assessment by the first purchaser or the first lender under 80-11-206(2), the seller may, upon the submission of a written, verified request to the department, obtain a refund of the assessment. The request must be accompanied by the original invoices received by the seller at the time of settlement. The department shall keep complete records of all refunds made under the provisions of this section. Records of refunds may be destroyed 2 years after the refund is made. All original invoices must be returned to the seller with the refund payment.

History: En. Sec. 13, Ch. 314, L. 1967; amd. Sec. 2, Ch. 201, L. 1971; amd. Sec. 112, Ch. 218, L. 1974; amd. Sec. 6, Ch. 71, L. 1975; R.C.M. 1947, 3-2913; amd. Sec. 43, Ch. 281, L. 1983; amd. Sec. 4, Ch. 48, L. 1987; amd. Sec. 10, Ch. 700, L. 1989; amd. Sec. 2, Ch. 576, L. 1993.

80-11-208. Receipt of gifts, grants, or donations for research purposes. The department may receive any gifts, grants, or donations for any research of scientific inquiries conducted under this part and may spend them in compliance with the conditions of the grants, gifts, and donations.

History: En. Sec. 15, Ch. 314, L. 1967; amd. Sec. 113, Ch. 218, L. 1974; R.C.M. 1947, 3-2915.

80-11-209. Official bonds of employees. Employees of the department participating in the handling of assessment receipts or other receipts shall be bonded for the faithful and safe handling and accounting for the receipts while in their hands and for faithful compliance with this part.

History: En. Sec. 16, Ch. 314, L. 1967; amd. Sec. 114, Ch. 218, L. 1974; R.C.M. 1947, 3-2916.

80-11-210. Wheat and barley account — sources — use — expenditures. (1) There shall be an account in the state special revenue fund known as the wheat and barley account. The following shall be placed in the account:

(a) the proceeds of all millage levies collected under this part; and

(b) the proceeds from all gifts, grants, or donations to the department for research authorized under this part.

(2) The account shall be maintained for the purposes of this part and shall be separate from all other accounts of the department.

(3) The department may direct the board of investments to invest funds from the account pursuant to the provisions of the unified investment program for state funds. The income from such investments shall be credited to the wheat and barley account.

History: En. Sec. 17, Ch. 314, L. 1967; amd. Sec. 2, Ch. 70, L. 1973; amd. Sec. 115, Ch. 218, L. 1974; amd. Sec. 2, Ch. 16, L. 1977; R.C.M. 1947, 3-2917; amd. Sec. 2, Ch. 277, L. 1983; amd. Sec. 5, Ch. 48, L. 1987; amd. Sec. 11, Ch. 700, L. 1989.

80-11-211. Violation — penalty. (1) Any person violating any of the provisions of this part is subject to an administrative civil penalty of not more than $5,000 for each monthly report not filed but required by administrative rule.

(2) The department shall establish by rule a penalty matrix that schedules the types of penalties, the amounts for initial and subsequent offenses, and other matters necessary for the administration of civil penalties under this section. The issuance of a civil penalty is subject to the contested case procedures of Title 2, chapter 4, part 6. The department shall adopt the rules within 3 months of July 1, 2019. The department may not enforce the penalties provided for in this section until the rules are adopted.

(3) Funds received in the form of civil penalties must be deposited in the general fund.

History: En. Sec. 19, Ch. 314, L. 1967; R.C.M. 1947, 3-2919; amd. Sec. 1, Ch. 64, L. 2019.

80-11-212. Terminated. Sec. 6, Ch. 630, L. 1983.

History: En. Sec. 3, Ch. 630, L. 1983.

80-11-213 through 80-11-220 reserved.

80-11-221. Repealed. Sec. 2, Ch. 31, L. 1983.

History: En. Sec. 2, Ch. 530, L. 1979.

80-11-222. Repealed. Sec. 2, Ch. 31, L. 1983.

History: En. Sec. 3, Ch. 530, L. 1979; amd. Sec. 2, Ch. 615, L. 1981.

80-11-223. Repealed. Sec. 2, Ch. 31, L. 1983.

History: En. Sec. 4, Ch. 530, L. 1979.

80-11-224. Determination of amount and allocation of assessment. (1) The committee shall set the amount of the assessment each year in accordance with 80-11-206.

(2) Money deposited in the wheat and barley account pursuant to 80-11-210 is available for appropriation to the committee for purposes of carrying out research and marketing under this part.

(3) The committee may be assessed costs by the department for the services it provides upon request or pursuant to 2-15-121. However, the costs charged must have a substantial relationship to the cost of services supplied.

History: En. Sec. 1, Ch. 615, L. 1981; amd. Sec. 6, Ch. 48, L. 1987; amd. Sec. 16, Ch. 10, L. 2009.

80-11-225. Committee procurement — rulemaking. (1) The wheat and barley committee is not subject to procurement procedures under Title 18, chapter 4.

(2) The committee shall adopt rules for procurement of goods and services necessary to the duties outlined in this part.

History: En. Sec. 1, Ch. 732, L. 2023.

Part 3
Alfalfa Seed Industry

80-11-301. *(Temporary)* **Short title.** This part may be cited as the "Alfalfa Seed Industry Act". *(Repealed effective July 1, 2026—sec. 6, Ch. 426, L. 2025, sec. 8, Ch. 426, L. 2025.)*

History: En. Sec. 2, Ch. 405, L. 1981.

80-11-302. *(Temporary)* **Findings — purpose.** (1) The legislature finds that:

(a) it is in the best interest of all the people of Montana that the abundant natural resources of the state be protected, fully developed, and uniformly distributed;

(b) economic waste threatens the alfalfa seed industry in Montana because of lack of proper advertising and dissemination of information necessary for the development and promotion of alfalfa seed grown in the state and because of lack of facilities and funds for research to:

(i) develop and improve control measures for diseases and pests which attack alfalfa seed pollinators;

(ii) improve alfalfa seed growing culture; and

(iii) disseminate information to the growers; and

(c) it is in the interest of the people and general welfare of the state that this avoidable economic waste be eliminated by the growers having at their disposal all available information on the best and most advanced methods of culture, growing, harvesting, and marketing of alfalfa seed.

(2) The purpose of this part is to promote the general welfare of the people of the state by improving the culture and production of and expanding the market for alfalfa seed grown in the state. *(Repealed effective July 1, 2026—sec. 6, Ch. 426, L. 2025, sec. 8, Ch. 426, L. 2025.)*

History: En. Sec. 3, Ch. 405, L. 1981.

80-11-303. *(Temporary)* **Definitions.** As used in this part the following definitions apply:

(1) "Committee" means the Montana alfalfa seed committee established in 2-15-3004.

(2) "Dealer" means any person, partnership, association, corporation, cooperative, or other business unit or device that first handles, packs, ships, buys, and sells alfalfa seed or that acts as sales or purchasing agent, broker, or factor of alfalfa seed.

(3) "Grower" means any landowner personally engaged in growing alfalfa seed, a tenant personally engaged in growing alfalfa seed, or both the owner and the tenant jointly, and includes a person, partnership, association, corporation, cooperative organization, trust, sharecropper, or any and all other business units, devices, and arrangements that grow alfalfa seed or are engaged in the pollination of alfalfa seed.

(4) "Handled in the primary channels of trade" means the time when any alfalfa seed is delivered under a sales contract, sold, or delivered for shipment and sale. *(Repealed effective July 1, 2026—sec. 6, Ch. 426, L. 2025, sec. 8, Ch. 426, L. 2025.)*

History: En. Sec. 4, Ch. 405, L. 1981.

80-11-304. *(Temporary)* **Powers of the committee.** The committee may:

(1) provide, through the department of agriculture, for the administration and enforcement of this part;

(2) enter into contracts in the name of the committee;

(3) authorize the purchase of all office equipment or supplies and incur all other reasonable and necessary expenses and obligations required to carry out the provisions of this part;

(4) become a member of and purchase membership in trade organizations and subscribe to and purchase trade bulletins, journals, and other trade publications;

(5) plan and conduct a research program to improve the quality of alfalfa seed, develop and improve control measures for disease and pests that attack alfalfa and alfalfa seed pollinators, improve alfalfa growing culture, disseminate information among the growers and dealers of the state, financially support the alfalfa leaf-cutting bee program provided for in Title 80, chapter 6, part 11, and enter into research contracts and other agreements as necessary;

(6) plan and conduct a publicity and sales promotion campaign to increase the sale and use of Montana alfalfa seed and enter into publicity and sales promotion contracts and other agreements as necessary;

(7) in cooperation with the director of the department of agriculture, establish and maintain the executive offices of the committee at any location in the state. The location may be changed at the discretion of the director and the committee.

(8) recommend rules and orders to be adopted for the exercise of its power and the performance of its duties, in accordance with the Montana Administrative Procedure Act;

(9) cooperate with any local, state, or national organization or agency, whether voluntary or created by the law of any state or the United States government, engaged in work or activities similar to the work and activities of the committee and enter into contracts or agreements with the organizations or agencies for carrying on a joint campaign of research, education, product protection, publicity, and reciprocal enforcement of these objectives; and

(10) accept grants, donations, and gifts from any source for expenditure for any purpose consistent with Title 80, chapter 6, part 11, or this part, including a purpose specified as a condition of a grant, donation, or gift. *(Repealed effective July 1, 2026—sec. 6, Ch. 426, L. 2025, sec. 8, Ch. 426, L. 2025.)*

History: En. Sec. 5, Ch. 405, L. 1981; amd. Sec. 3, Ch. 102, L. 2015.

80-11-305. *(Temporary)* **Compensation — per diem.** Each committee member is entitled to compensation as provided in 2-15-122 for each day that the member is engaged in the transaction of official business and must be reimbursed for travel expenses as provided in 2-18-501 through 2-18-503. *(Repealed effective July 1, 2026—sec. 6, Ch. 426, L. 2025, sec. 8, Ch. 426, L. 2025.)*

History: En. Sec. 6, Ch. 405, L. 1981; amd. Sec. 2612, Ch. 56, L. 2009; amd. Sec. 4, Ch. 30, L. 2015.

80-11-306. Repealed. Sec. 10, Ch. 220, L. 1995.

History: En. Sec. 7, Ch. 405, L. 1981.

80-11-307. Repealed. Sec. 5, Ch. 426, L. 2025.

History: En. Sec. 8, Ch. 405, L. 1981.

80-11-308. Repealed. Sec. 5, Ch. 426, L. 2025.

History: En. Sec. 9, Ch. 405, L. 1981; amd. Sec. 2613, Ch. 56, L. 2009.

80-11-309. *(Temporary)* **Refund of assessment.** Any person who has paid assessments to the department may request the department to refund all or any portion of the assessment levied under the rules of the department and paid by the producer. All such requests must be in writing, filed not later than August 1 of each calendar year for the preceding crop year, and must be on forms to be available without cost to all producers who pay assessments. *(Repealed effective July 1, 2026—sec. 6, Ch. 426, L. 2025, sec. 8, Ch. 426, L. 2025.)*

History: En. Sec. 10, Ch. 405, L. 1981.

80-11-310. *(Temporary)* **Deposit and disbursement of funds — investment.** (1) As soon as possible after receipt, all money received by the department from the assessment levied under 80-11-307 (repealed by section 5, Chapter 426, Laws of 2025) and all other money received must be deposited in the alfalfa seed account in the state special revenue fund.

(2) (a) All money referred to in subsection (1) may be appropriated to the committee and may be used only for the payment of expenses incurred in carrying out the provisions of Title 80, chapter 6, part 11, and this part.

(b) The committee may transfer money from the account to the alfalfa leaf-cutting bee account provided for in 80-6-1109.

(c) The committee may be assessed costs by the department for the services it provides upon request or pursuant to 2-15-121. The costs charged must have a substantial relationship to the cost of services supplied.

(3) Money received under 80-11-312, 80-11-313, and this section that is not immediately required for the purposes of Title 80, chapter 6, part 11, and this part must be invested under provisions of the unified investment program established in Title 17, chapter 6, part 2. The income from the investment must be deposited in the alfalfa seed account in the state special revenue fund.

(4) Money received under 80-11-312, 80-11-313, and this section may be appropriated to the committee for the purposes of Title 80, chapter 6, part 11, and this part. *(Repealed effective July 1, 2026—sec. 6, Ch. 426, L. 2025, sec. 8, Ch. 426, L. 2025.)*

History: En. Sec. 11, Ch. 405, L. 1981; amd. Sec. 2, Ch. 277, L. 1983; amd. Sec. 12, Ch. 700, L. 1989; amd. Sec. 2, Ch. 575, L. 1991; amd. Sec. 8, Ch. 220, L. 1995; amd. Sec. 71, Ch. 509, L. 1995; amd. Sec. 4, Ch. 102, L. 2015.

80-11-311. *(Temporary)* **Records required.** Each dealer shall maintain accurate records of all alfalfa seed handled, packed, shipped, or processed by the dealer. The records must be in the form and contain the information that the department may by rule prescribe, must be preserved for a period of 2 years, and are subject to inspection at any time upon request of the department or its agents. *(Repealed effective July 1, 2026—sec. 6, Ch. 426, L. 2025, sec. 8, Ch. 426, L. 2025.)*

History: En. Sec. 12, Ch. 405, L. 1981; amd. Sec. 2614, Ch. 56, L. 2009.

80-11-312. *(Temporary)* **Penalty for nonpayment.** Any grower or dealer who fails to make collection or pay any assessment within the time required pursuant to this part is subject to a penalty of 5% of the amount of the assessment determined to be due, as provided in this part, plus 1% of such amount for each month of delay or fraction thereof after the expiration of the month after such assessment became due. The penalty must be paid to the department and disposed of as provided in 80-11-310. *(Repealed effective July 1, 2026—sec. 6, Ch. 426, L. 2025, sec. 8, Ch. 426, L. 2025.)*

History: En. Sec. 13, Ch. 405, L. 1981.

80-11-313. *(Temporary)* **Penalty.** In addition to the penalty specified in 80-11-312, any person who violates or aids in a violation of any of the provisions of this part or any of the rules or orders of the department adopted under this part, upon conviction thereof, is punishable by a fine not to exceed $500. All fines collected, except fines collected by a justice's court, shall be deposited as provided in 80-11-310. *(Repealed effective July 1, 2026—sec. 6, Ch. 426, L. 2025, sec. 8, Ch. 426, L. 2025.)*

History: En. Sec. 14, Ch. 405, L. 1981; amd. Sec. 52, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Part 4
Mint and Mint Oil Production
(Repealed)

80-11-401. Repealed. Sec. 1, Ch. 47, L. 2015.
History: En. Sec. 2, Ch. 182, L. 1989.

80-11-402. Repealed. Sec. 1, Ch. 47, L. 2015.
History: En. Sec. 3, Ch. 182, L. 1989; amd. Sec. 1, Ch. 46, L. 2001.

80-11-403. Repealed. Sec. 1, Ch. 47, L. 2015.
History: En. Sec. 4, Ch. 182, L. 1989; amd. Sec. 1, Ch. 62, L. 1993; amd. Sec. 1, Ch. 22, L. 1999.

80-11-404. Repealed. Sec. 1, Ch. 47, L. 2015.
History: En. Sec. 5, Ch. 182, L. 1989; amd. Sec. 2615, Ch. 56, L. 2009; amd. Sec. 5, Ch. 30, L. 2015.

80-11-405. Repealed. Sec. 1, Ch. 47, L. 2015.
History: En. Sec. 6, Ch. 182, L. 1989; amd. Sec. 2, Ch. 15, L. 2009; amd. Sec. 2616, Ch. 56, L. 2009.

80-11-406 through 80-11-410 reserved.

80-11-411. Repealed. Sec. 3, Ch. 62, L. 1993.
History: En. Sec. 7, Ch. 182, L. 1989.

80-11-412. Repealed. Sec. 1, Ch. 47, L. 2015.
History: En. Sec. 8, Ch. 182, L. 1989; amd. Sec. 2, Ch. 62, L. 1993; amd. Sec. 2, Ch. 46, L. 2001.

80-11-413. Repealed. Sec. 1, Ch. 47, L. 2015.
History: En. Sec. 9, Ch. 182, L. 1989; amd. Sec. 3, Ch. 46, L. 2001.

80-11-414. Repealed. Sec. 1, Ch. 47, L. 2015.
History: En. Sec. 10, Ch. 182, L. 1989; amd. Sec. 4, Ch. 46, L. 2001.

80-11-415. Repealed. Sec. 1, Ch. 47, L. 2015.
History: En. Sec. 11, Ch. 182, L. 1989.

80-11-416. Repealed. Sec. 1, Ch. 47, L. 2015.
History: En. Sec. 12, Ch. 182, L. 1989; amd. Sec. 2617, Ch. 56, L. 2009.

80-11-417. Repealed. Sec. 1, Ch. 47, L. 2015.
History: En. Sec. 13, Ch. 182, L. 1989; amd. Sec. 5, Ch. 46, L. 2001.

80-11-418. Repealed. Sec. 1, Ch. 47, L. 2015.
History: En. Sec. 14, Ch. 182, L. 1989.

80-11-419. Repealed. Sec. 1, Ch. 47, L. 2015.
History: En. Sec. 15, Ch. 182, L. 1989.

Part 5
Agricultural Commodity Research and Market Development

80-11-501. Short title. This part may be cited as the "Agricultural Commodity Research and Market Development Enabling Act".
History: En. Sec. 1, Ch. 83, L. 1999.

80-11-502. Findings — purpose. (1) The legislature finds that:
(a) agriculture is the leading industry in Montana, based on cash receipts, and that agricultural commodities are resources of the first magnitude in the economy of Montana residents;
(b) agricultural commodities are prime factors in the production of wealth and in the development and stabilization of property values and of activities and enterprises that form the bases and sources of important contributions by taxation to the public revenue; and
(c) Montana agricultural commodities enter a world market that is highly competitive in character.
(2) In order to protect and foster the health, prosperity, and general welfare of the people of Montana, it is declared to be the public policy of this state to encourage and promote intensive, scientific, and practical research into all phases of agricultural commodity culture, production, marketing, and use and into the development of markets for commodities grown or produced in Montana.
History: En. Sec. 2, Ch. 83, L. 1999.

80-11-503. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:
(1) "Advisory committee" means a committee created by the department under authority of 80-11-510 for the purpose of advising the department on the implementation and administration of a commodity research and market development program established in 80-11-512.
(2) "Commercial channels" means the sale of agricultural commodities for any use when sold to:
(a) a commercial buyer, dealer, processor, or cooperative;
(b) a person, public or private, who resells any agricultural commodity or product produced from crops grown in Montana; or
(c) a first purchaser in Montana.
(3) "Commodity" means any agricultural crop, forage used by livestock, livestock, bird, fish, or value-added agricultural product that is grown or produced in or imported into Montana.
(4) "First purchaser" means a person, public or private, corporation, association, or partnership that buys, accepts for shipment, or otherwise acquires the property in or to agricultural commodities from a grower or producer. The term includes a mortgagee, pledgee, lienor, or other person, public or private, that has a claim against a grower or producer, when the actual or constructive possession of a commodity is taken as part payment or in satisfaction of a mortgage, pledge, lien, or claim.
(5) "Grower" or "producer" means a person or landowner who is personally engaged in growing or producing agricultural commodities, a tenant of the landowner who is personally engaged in growing or producing commodities, or both the landowner and the tenant jointly. The term includes a person, partnership, association, corporation, cooperative, trust, sharecropper, and all other business units, devices, and arrangements.

(6) "Person" means a natural person, individual, firm, partnership, association, corporation, company, or organized group of persons and any trustee, receiver, assignee, or similar representative.

(7) "Sale" includes any mortgage or pledge of agricultural commodities to a person, public or private.

History: En. Sec. 3, Ch. 83, L. 1999.

80-11-504. Powers of department — rulemaking. (1) In consultation with respective commodity advisory committees, the department may:

(a) adopt commodity research and market development programs pursuant to 80-11-512;

(b) adopt rules necessary for the implementation and administration of this part and commodity research and market development programs;

(c) hire employees or enter into contracts or agreements for the administration of commodity research and market development programs;

(d) enter into reciprocal agreements with analogous agricultural commodity research and market development programs outside of Montana for the collection and transfer of assessments on commodities sold across state borders;

(e) conduct audits of first purchaser commodity businesses to ensure collection and payment of commodity assessments in accordance with 80-11-516;

(f) place stop purchase or sale orders on commodities and apply for and obtain injunctions against first purchaser commodity businesses when it is determined that the first purchaser has not been collecting and paying required commodity assessments in accordance with 80-11-516;

(g) provide for the enforcement of this part;

(h) provide for the conduct of marketing and research into the production and uses of agricultural commodities;

(i) enter into contracts or agreements with units of the Montana university system and other university systems and other organizations, public or private, for purposes of:

(i) improving commodity quality;

(ii) increasing the efficiency of production;

(iii) developing marketing knowledge and markets;

(iv) determining new uses for commodities;

(v) developing alternative and rotation crops; and

(vi) carrying out all research and market development contemplated by this part.

(2) In administering the provisions of this part, the department may adopt rules establishing guidelines for:

(a) the petition and hearing process regarding adoption or elimination of commodity research and market development programs as set out in 80-11-512 and 80-11-513;

(b) the creation of commodity advisory committees as set out in 80-11-510;

(c) the adoption, collection, and enforcement of commodity assessments as set out in 80-11-515 and 80-11-516;

(d) policies and procedures for administration of commodity research and market development programs suggested by commodity advisory committees pursuant to 80-11-511; and

(e) conducting or contracting for commodity research and market development projects and guidelines for procedures for entering into reciprocal agreements with analogous commodity research and market development programs outside of Montana, as contemplated in this section.

History: En. Sec. 4, Ch. 83, L. 1999.

80-11-505 through 80-11-509 reserved.

80-11-510. Creation of commodity advisory committees. (1) The department may create commodity advisory committees subject to the following:

(a) Twenty-five or more producers of a commodity shall petition the department to create a commodity advisory committee. The format, information required, and criteria of valid petitions must be established by department rule.

(b) Within 60 days of receipt and verification of a qualified petition, the department shall hold a hearing to receive relevant input from growers, producers, and first purchasers regarding

the proposed commodity advisory committee. The department shall advertise the hearing in areas where it is known the commodity is grown and in any applicable trade publication.

(2) Each advisory committee created under this section must be known as the "... advisory committee".

(3) The department shall prescribe the composition and advisory functions of each advisory committee created and appoint advisory committee members, who serve at the pleasure of the director. The majority of members on a crop or livestock commodity advisory committee must be producers of the commodity.

(4) Unless the advisory committee member is a full-time salaried officer or employee of this state or of any political subdivision of this state, each member is entitled to be paid an amount to be determined by the department, not to exceed the daily amount established in 2-15-122(5) for each day in which the member is actually and necessarily engaged in the performance of advisory committee duties. Each member is also entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while in the performance of advisory committee duties. Members who are full-time salaried officers or employees of this state or of any political subdivision of this state are not entitled to be compensated for their service as members, but are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503.

(5) Unless otherwise specified by the department, at its first meeting each year, each advisory committee shall elect a presiding officer and other officers whom it considers necessary.

(6) Unless otherwise specified by the department, each advisory committee shall meet at least annually. An advisory committee shall also meet on the call of the department and may meet at other times on the call of the presiding officer or a majority of its members.

(7) A majority of the membership of an advisory committee constitutes a quorum to do business.

(8) In order for the creation of an advisory committee to be effective, the governor shall file in the governor's office and in the office of the secretary of state a record of the advisory committee created showing the advisory committee's:

(a) name, in accordance with subsection (2);

(b) composition;

(c) names and addresses of the appointed members; and

(d) purpose.

History: En. Sec. 5, Ch. 83, L. 1999; amd. Sec. 1, Ch. 151, L. 2015.

80-11-511. Duties of commodity advisory committees. (1) Each commodity advisory committee created in 80-11-510 shall advise the department regarding:

(a) policies and procedures to be followed by the department when administering a commodity research and market development program associated with each respective advisory committee;

(b) adoption of rules implementing and administering respective commodity research and market development programs;

(c) annual assessments on agricultural commodities associated with a respective research and market development program;

(d) assessment collection and enforcement procedures to be followed with each respective research and market development program; and

(e) the awarding of research and marketing contracts.

(2) None of the powers or duties provided for in this part permit participation in state or federal political action by an advisory committee.

History: En. Sec. 6, Ch. 83, L. 1999.

80-11-512. Adoption of commodity research and market development program — referendum — hearing. (1) A commodity advisory committee formed pursuant to 80-11-510 shall hold at least one public hearing to receive relevant input from affected growers and producers on a proposed referendum, including the amount of the proposed assessment and the method of collection. The department shall advertise the hearing in areas where it is known the commodity is grown and in any applicable trade publication.

(2) (a) After considering the facts and information received at the hearing, the commodity advisory committee shall vote on whether to hold a referendum of affected growers and producers.

(b) The referendum must include, among other informational items, the amount of the assessment and the method of collection.

(c) The referendum must be by paper ballot mailed to the last-known address of known growers and producers of the relevant commodity, obtained from lists provided by the petitioner and other sources known to the department.

(d) Each grower or producer, as defined in 80-11-503, is entitled to one vote.

(e) If the commodity advisory committee votes against holding a referendum, the committee shall vote whether to dissolve the committee. If the commodity advisory committee votes against dissolution, the committee may continue to advise the department for 1 year from the date of the vote. If a referendum is not held or is defeated within 1 year of the vote, the commodity advisory committee is dissolved.

(3) If the referendum passes, the advisory committee shall propose a commodity research and market development program to the department for adoption.

History: En. Sec. 7, Ch. 83, L. 1999; amd. Sec. 2, Ch. 151, L. 2015.

80-11-513. Elimination of commodity research and market development program — petition — hearing. The department shall eliminate a commodity research and market development program subject to the following:

(1) After 2 years from the date on which a commodity research and market development program is adopted, the department may, upon its own accord or upon receipt of a verified petition from 15% or more of the growers or producers of a commodity requesting elimination of a research and market development program, call a hearing to determine if the program should be eliminated. The format, information required, and criteria of valid petitions must be established by department rule.

(2) After considering the facts and information received at the hearing, the department may, within 60 days of the hearing, hold a referendum of affected growers and producers. The referendum must be by paper ballot mailed to the last-known address of known growers and producers of the relevant commodity, obtained from lists provided by the petitioner and other sources known to the department. To be eligible to vote on a referendum, an individual must be a producer who is 18 years of age or older and a Montana resident.

(3) Based on a majority referendum vote in favor of elimination, the department shall repeal all rules and administrative procedures and policies associated with the relevant commodity research and market development program and dissolve the associated advisory committee.

(4) All funds of a former commodity research and market development program remaining in the account established in 80-11-518 revert to the general fund.

History: En. Sec. 8, Ch. 83, L. 1999.

80-11-514 reserved.

80-11-515. Annual commodity assessment — collection. (1) The department, in consultation with each commodity advisory committee, shall, for each commodity associated with a research and marketing program, adopt by rule an annual assessment on program commodities grown, delivered, or stored in Montana and sold through commercial channels.

(2) The assessments are levied and imposed:

(a) at the time of first sale of any commodity by a seller and must be collected by the first purchaser of the commodity from the seller at the time of each settlement for the commodity purchased;

(b) in the case of a mortgage or pledge of a commodity as security for a loan under any federal price support program, other than the commodity credit corporation, at the time that the loan is made and must be collected by the agency or person making the loan by deducting the amount of the assessment from the proceeds of the loan;

(c) in the case of a commodity pledged under the federal commodity credit corporation, at the time of purchase and must be collected at the time of purchase, not at the time that a lease or loan is made under the program; or

(d) as otherwise provided by department rule for the specific research or market development program.

(3) The assessments levied under the provisions of this section must be deducted and collected as provided by this part, whether the commodity is stored in Montana or any other state. The assessment attaches to each transaction, but a seller is not subject to assessment more than once regardless of the number of times that the commodity is the subject of a sale, mortgage, pledge, or other transaction. The assessment is imposed and attaches on the initial sale, mortgage, pledge, or other transaction in which the commodity seller parts with title to the commodity or creates some interest in the commodity in a mortgagee, pledgee, or other person.

(4) If the first purchaser is a foreign entity, the producer shall make a good faith effort to ensure that the assessment is collected as provided in this section and paid to the department as provided in 80-11-516.

History: En. Sec. 9, Ch. 83, L. 1999.

80-11-516. Delivery of invoice — form — filing of sworn statement — payment of assessment — refund. (1) The first purchaser of a commodity at the time of sale or the mortgagee, pledgee, or other lender at the time of the loan or advance shall give separate invoices for each purchase, delivery, or storage charge to the seller or person delivering the commodity or entering it into storage. The invoices must be on forms approved by the department and must show:

(a) the name and address of the seller or of the person delivering the commodity or entering it into storage;

(b) the name and address of the purchaser or the lender;

(c) the quantity of commodity sold, mortgaged, pledged, delivered, or stored; and

(d) the date of the purchase, mortgage, pledge, delivery, or storage and the amount of assessment collected and remitted to the department.

(2) (a) Within 20 days after the end of a month in which a first purchaser purchases a commodity or in which a lender makes a loan or advance on a commodity, the first purchaser, mortgagee, or pledgee shall file with the department, on forms prescribed by the department, a sworn statement of:

(i) the quantity of a commodity purchased in Montana;

(ii) the quantity mortgaged or pledged or otherwise transferred or liened as security for a loan during the preceding calendar month; or

(iii) the quantity delivered or stored.

(b) At the time that the sworn statement is filed, the first purchaser or lender shall pay to the department the assessment provided for in 80-11-515 for deposit in the appropriate account in the state special revenue fund.

(3) The statements referred to in subsections (1) and (2) must be legible and without corrections or erasures. A person may not alter any part of a statement.

(4) If the first purchaser fails to pay the department the assessment prescribed in subsection (2) within 60 days, the amount of the uncollected assessment must be considered a lien upon the assets of the first purchaser. The department, in its discretion, may:

(a) suspend or revoke any license authorizing the first purchaser to purchase the commodity;

(b) place a stop purchase or stop sale order on commodities being purchased by the first purchaser;

(c) apply for and obtain an injunction; or

(d) seek a penalty set forth in 80-11-519.

(5) After 30 days and before 90 days following the deduction of the assessment by the first purchaser or the first lender under 80-11-515 or as otherwise provided by department rule, the seller may, upon the submission of a written, verified request to the department, obtain a refund of the assessment. The request must be accompanied by the original invoices received by the seller at the time of settlement. The department shall keep complete records of all refunds made under the provisions of this section for 2 years after the refund is made, after which records of refunds may be destroyed. All original invoices must be returned to the seller with the refund payment.

History: En. Sec. 10, Ch. 83, L. 1999.

80-11-517. Receipt of gifts, grants, and donations for research and marketing purposes. The department may receive gifts, grants, and donations for any commodity research and market development conducted pursuant to this part.

History: En. Sec. 11, Ch. 83, L. 1999.

80-11-518. Account established — sources — use — expenditures. (1) There is an account in the state special revenue fund into which must be placed:

(a) the proceeds of all commodity assessments and penalties collected under this part; and

(b) the proceeds from all gifts, grants, and donations to the department for commodity research and market development received under 80-11-517.

(2) Funds deposited in the account for a specific commodity research and market development program may be expended only for the purposes of that program.

(3) Money deposited in the account is statutorily appropriated, as provided in 17-7-502, to the department for purposes of this part.

(4) The department may direct the board of investments to invest funds from the account pursuant to the provisions of the unified investment program for state funds. Income from the investments must be credited to the account.

(5) The department may assess costs for the services that it provides to each commodity research and market development program. However, the costs assessed must be commensurate to the cost of the services provided.

History: En. Sec. 12, Ch. 83, L. 1999.

80-11-519. Penalty for violation. A person who violates any provision of this part is guilty of a misdemeanor and upon conviction shall be fined an amount not less than $25 or more than $1,000. All fines collected must be deposited as provided in 80-11-518.

History: En. Sec. 13, Ch. 83, L. 1999.

Part 6
Organic Certification

80-11-601. State organic certification program — administration by department. (1) There is a state organic certification program administered by the department of agriculture.

(2) The department may adopt rules as necessary to implement the program consistent with organic regulations and trade laws of the United States and other markets.

(3) The department shall seek input from the Montana organic association, producers, handlers, processors, and others in the community on a regular basis as to the need of the certification program, research, markets, and other matters concerning organics.

(4) A state organic certification program may not be construed to apply to organic producers, processors, and handlers certified solely by other organic certification programs, whether public, private, foreign, or domestic, nor may the state organic certification program prohibit those other certifying organizations from certifying and collecting fees from organic producers, processors, handlers, or any other commercial entity in Montana. Organic producers, processors, and handlers may be certified under both the state organic certification program and programs administered by other certifying organizations.

History: En. Sec. 1, Ch. 172, L. 1999; amd. Sec. 1, Ch. 245, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 245, L. 2025. Amendment effective October 1, 2025.

80-11-602. Account established — sources — use — expenditures. (1) There is an account in the state special revenue fund. The following must be placed in the account:

(a) the proceeds from all gifts, grants, or donations to the department for development and administration of the state organic certification program authorized under 80-11-601; and

(b) the proceeds of assessments, penalties, and other money collected pursuant to a state organic certification program when implemented pursuant to 80-11-601.

(2) The account must be maintained for the purposes of 80-11-601 and must be separate from all other accounts of the department.

(3) The department may direct the board of investments to invest funds from the account pursuant to the provisions of the unified investment program for state funds. The income from those investments must be credited to the account established in this section.

History: En. Sec. 2, Ch. 172, L. 1999; amd. Sec. 2, Ch. 245, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 245, L. 2025. Amendment effective October 1, 2025.

Part 7
Montana Huckleberry Products
(Repealed)

80-11-701. Repealed. Sec. 1, Ch. 66, L. 2023.

History: En. Sec. 1, Ch. 148, L. 2007.

80-11-702. Repealed. Sec. 1, Ch. 66, L. 2023.

History: En. Sec. 2, Ch. 148, L. 2007.

Part 8
Montana-Certified Natural Beef Cattle Marketing Program
(Repealed)

80-11-801. Repealed. Sec. 1, Ch. 39, L. 2019.

History: En. Sec. 1, Ch. 300, L. 2007; amd. Sec. 1, Ch. 70, L. 2009.

Part 9
Food and Agricultural Development Program

80-11-901. Montana food and agricultural development program — definition. (1) There is a program administered by the agriculture development council provided for in Title 90, chapter 9, to promote Montana food and agricultural development. The program must provide grant funding for Montana food and agricultural development centers that are charged with:

(a) developing Montana's capacity to produce food and value-added agricultural products, including farm-derived renewable energy, commodity processing infrastructure, and emerging technologies intended to diversify, add value, or enhance economic growth opportunities for Montana's agricultural economy; and

(b) providing technical assistance and other services to community-based food, agriculture, technology, and farm-derived renewable energy entrepreneurs.

(2) Technical assistance includes but is not limited to business assistance, product development, marketing, nutritional analysis and labeling, education, assistance with food safety regulation compliance, training to educate business professionals and entrepreneurs on industry dynamics and technology of specific bioproduct industries, and evaluating existing and developing technologies.

(3) Each center must be a nonprofit organization and shall coordinate with other state-funded programs in order to not duplicate state assistance.

(4) As used in this section, "farm-derived renewable energy" means renewable energy produced from products developed by farmers and ranchers, as well as entrepreneurs, using Montana farm and ranch products.

History: En. Sec. 1, Ch. 386, L. 2009; amd. Sec. 7, Ch. 343, L. 2019.

Part 10
Pulse Crop Research and Marketing

80-11-1001. Definitions. As used in this part, the following definitions apply:

(1) "Committee" means the Montana pulse crop committee provided for in 2-15-3007.

(2) "Department" means the department of agriculture provided for in 2-15-3001.

(3) "Net receipts" means the net weight multiplied by the price paid to the producer.

(4) "Producer" means a person or landowner who is personally engaged in growing or producing pulse crops, a tenant of the landowner who is personally engaged in growing or producing pulse crops, or both the landowner and the tenant jointly. The term includes a person, partnership, association, corporation, cooperative, trust, sharecropper, and all other business units, devices, and arrangements.

(5) "Pulse crops" means dry peas, lentils, chickpeas, and fava beans.

History: En. Sec. 2, Ch. 312, L. 2017.

80-11-1002. Pulse crop committee — officers — meetings — reimbursement. (1) The members of the committee shall elect a presiding officer from among the committee members. The presiding officer serves a 1-year term.

(2) The committee shall meet at least once a year and at other times as called by the presiding officer or by any three voting members of the committee.

(3) Committee members may not receive a salary but are entitled to compensation as provided in 2-15-122 for each day they are engaged in the transaction of official business. Members must be reimbursed as provided in 2-18-501 through 2-18-503 for travel expenses incurred while on official business.

History: En. Sec. 3, Ch. 312, L. 2017.

80-11-1003. Powers of committee — administrative costs. (1) The committee:

(a) may plan and conduct a research program to improve the quality of pulse crops, develop and improve control measures for disease and pests that attack pulse crops, and disseminate information among the growers and dealers of the state;

(b) may plan and conduct a publicity and sales promotion campaign to increase the sale and use of Montana pulse crops;

(c) may cooperate with a local, state, or national organization or agency, whether voluntary or created by the law of a state or the United States government, engaged in similar work or activities to carry out a joint campaign of research, education, product protection, publicity, and reciprocal enforcement of the objectives of this part;

(d) may enter into contracts and other agreements to carry out the purposes of this section;

(e) shall have final authority on the use and distribution of money from the pulse crop special revenue account provided for in 80-11-1006;

(f) may provide, through the department, for the administration and enforcement of this part;

(g) may recommend rules and orders to be adopted for the exercise of its powers and the performance of its duties, in accordance with the Montana Administrative Procedure Act;

(h) may authorize the purchase of office equipment or supplies and incur all other reasonable and necessary expenses and obligations required to carry out the provisions of this part;

(i) may become a member of and purchase membership in trade organizations and subscribe to and purchase trade bulletins, journals, and other trade publications; and

(j) may, in cooperation with the director of the department, establish and maintain the executive offices of the committee at any location in the state. The location may be changed at the discretion of the director and the committee.

(2) Funds used by the department for administering the program, including but not limited to personal service costs, operating costs, office and office equipment costs, and other administrative costs attributable to the program, may not exceed 8% of the total amount of grants and contracts awarded from the pulse crop account provided for in 80-11-1006 in the previous fiscal year.

History: En. Sec. 4, Ch. 312, L. 2017.

80-11-1004. Pulse crop commodity assessment — collection. (1) There is an assessment on pulse crops grown, delivered, and stored as established by the committee by rule in accordance with this section.

(2) The assessment must be at least 1% and no more than 2% of the net receipts of pulse crops grown, delivered, and stored in Montana.

(3) The assessment shall occur at the time of first sale by a producer and must be collected by the first purchaser of the commodity from the producer. The amount must be assessed at the time of each settlement for the commodity purchased or by invoice form provided by the department.

(4) The department shall collect the assessment and deposit the revenue in the pulse crop special revenue account provided for in 80-11-1006.

History: En. Sec. 5, Ch. 312, L. 2017; amd. Sec. 2, Ch. 64, L. 2019.

80-11-1005. Refund of assessment. (1) A producer who has paid assessments to the department may request that the department refund all or a portion of the assessment levied under the rules of the committee and paid by the producer. A refund request must be submitted in writing on an application form that is available without cost to all producers who pay assessments.

(2) The producer shall complete the refund application and return the application to the department, together with a record of the assessment collected, within 90 days after the date of the assessment or final settlement.

(3) If a refund request is not submitted to the department within the prescribed time period, the producer is presumed to have agreed to the assessment.

(4) A producer is not entitled to a refund under this section unless the refundable amount is $5 or more.

History: En. Sec. 6, Ch. 312, L. 2017.

80-11-1006. Pulse crop account — sources — use — expenditures. (1) There is a pulse crop account in the state special revenue fund to the credit of the department for use as provided in this section.

(2) The account consists of:

(a) proceeds from assessments collected pursuant to 80-11-1004; and

(b) gifts, grants, and donations to the department for research authorized under this part.

(3) Money in the account must be used for the purposes of this part and is separate from all other accounts of the department.

(4) Money in the account is statutorily appropriated, as provided in 17-7-502, to the department of agriculture for use by the Montana pulse crop committee for the purposes of this part. Expenditures for administrative costs allowed under 80-11-1003(2) must be made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose.

(5) The department may direct the board of investments to invest funds from the account pursuant to the provisions of the unified investment program for state funds. The income from the investments must be credited to the pulse crop account.

History: En. Sec. 7, Ch. 312, L. 2017.

80-11-1007. Department activities — bonding of employees — assessment of costs. (1) Department employees who handle assessments or other receipts must be bonded for the faithful and safe handling of and accounting for the receipts while in their hands and for faithful compliance with this part.

(2) The committee may be assessed costs by the department for the services it provides on request or pursuant to 2-15-121. The costs charged must have a substantial relationship to the costs of services provided.

History: En. Sec. 8, Ch. 312, L. 2017.

80-11-1008. Violation — penalty. (1) A person violating a provision of this part is subject to an administrative civil penalty of not more than $5,000 for each monthly statement not filed but required by administrative rule.

(2) The department shall establish by rule a penalty matrix that schedules the types of penalties, the amounts for initial and subsequent offenses, and other matters necessary for the administration of civil penalties under this section. The issuance of a civil penalty is subject to the contested case procedures of Title 2, chapter 4, part 6. The department shall adopt the rules within 3 months of July 1, 2019. The department may not enforce the penalties provided for in this section until the rules are adopted.

(3) Funds received in the form of civil penalties must be deposited in the general fund.

History: En. Sec. 9, Ch. 312, L. 2017; amd. Sec. 3, Ch. 64, L. 2019.

Part 11
Montana Hemp

80-11-1101. Hemp certification program — plan — department authority — rulemaking. (1) (a) The department may develop a state hemp certification program plan.

(b) If developed, the plan must conform with applicable federal standards and industry best practices.

(c) If a hemp commodity advisory committee is formed in accordance with 80-11-510, the department shall request the committee's input in developing the plan.

(2) The department may implement a state hemp certification program in accordance with chapter 18, this section, and rules adopted by the department in accordance with subsection (5) of this section.

(3) (a) A state hemp certification program must ensure that a product sold or labeled as Montana hemp:

(i) is grown under a valid state license and in accordance with chapter 18; and

(ii) undergoes laboratory testing protocols to meet applicable state and federal food safety and product labeling laws.

(b) A state hemp certification program may contain requirements that are more stringent than those contained in federal law or regulation.

(4) After establishment of a state hemp certification program, the department shall include the promotion of Montana-certified hemp in its agricultural product marketing programs.

(5) If the department establishes a state hemp certification program, the department shall adopt rules necessary to implement the program. The rules may include but are not limited to:

(a) provisions for the operation of a state hemp certification program by the department;

(b) fees to be paid by applicable entities commensurate to the costs of operating a state hemp certification program;

(c) penalties and enforcement provisions for a state hemp certification program; and

(d) additional requirements necessary for administering a state hemp certification program.

History: En. Sec. 1, Ch. 288, L. 2019.

CHAPTER 12
MONTANA AGRICULTURAL LOAN AUTHORITY ACT

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Chapter Cross-References

The Montana Unified Volume Cap Bond Allocation Plan Act, Title 17, ch. 5, part 13.
Agriculture development — investments, Title 90, ch. 9, part 3.
Agriculture marketing enhancement — export assistance, Title 90, ch. 9, part 4.

Part 1
General

80-12-101. Short title. This chapter may be cited as the "Montana Agricultural Loan Authority Act".

History: En. Sec. 2, Ch. 580, L. 1983.

80-12-102. Definitions. (1) As used in this chapter, the following definitions apply:

(a) "Agricultural land" means land actively devoted to agricultural use as defined in 15-7-202.

(b) "Authority" means the department of agriculture provided for in 2-15-3001.

(c) "Bonds" means bonds or bond anticipation notes issued by the authority under the provisions of this chapter.

(2) References to the authority's property, revenues, or assets apply only to property, revenues, and assets generated by the Montana agricultural loan authority program, not those owned or generated by any other program or property over which the authority exercises general authority, direction, and control.

History: En. Sec. 3, Ch. 580, L. 1983; amd. Sec. 4, Ch. 168, L. 1991.

80-12-103. Agricultural loan authority — general powers. The authority may:

(1) retain professional consultants and advisers;

(2) adopt rules governing its procedures;

(3) purchase agricultural loans made by financial institutions;

(4) issue bonds, in accordance with 80-12-301, necessary to provide funds for implementing this chapter;

(5) invest any funds generated by sale of bonds in the permissible investments outlined in 17-6-211 until such time as the funds are needed for any of the authority's other functions;

(6) procure insurance or guaranties in amounts and in the form the authority considers desirable or necessary, from any party, including a governmental agency, against any loss in connection with its loan agreements; and

(7) use the assistance and services of the farmers home administration, the production credit association, the federal land bank, or private lenders in approving loans for issuance of bonds.

History: En. Sec. 4, Ch. 580, L. 1983; amd. Sec. 1, Ch. 448, L. 1985.

80-12-104. Powers to be interpreted broadly. The powers enumerated in this chapter must be interpreted broadly to effectuate the purposes of the authority and may not be construed as a limitation of powers.

History: En. Sec. 27, Ch. 580, L. 1983.

Part 2
Loans

80-12-201. Loan agreements — general provisions. (1) Each loan approved by the authority for issuance of a bond must include a loan agreement providing a payment schedule that may not exceed 30 years.

(2) The agreement must specify a reasonable rate of interest, which rate may be a variable rate provided the method of determination is contained in the loan agreement.

(3) Loans approved by the authority for issuance of a bond may be secured by any liens or collateral the financial institution considers necessary.

(4) The money received under a loan agreement may be used for:

(a) acquisition of farm or ranch land;

(b) a downpayment on the acquisition of farm or ranch land;

(c) acquisition or construction of depreciable property used in the operation of a farm or ranch; or

(d) production of energy using an alternative renewable energy source as defined in 15-6-225.

History: En. Sec. 5, Ch. 580, L. 1983; amd. Sec. 23, Ch. 591, L. 2001; amd. Sec. 11, Ch. 405, L. 2003.

80-12-202. Immediate repayment. If an applicant who has obtained the approval of the authority for the issuance of a bond to fund the applicant's loan for the acquisition of farm or ranch land sells the land for which the loan was made to any person, firm, or corporation other than the applicant's spouse, children, or corporation wholly owned by them, the loan must be repaid in full.

History: En. Sec. 6, Ch. 580, L. 1983; amd. Sec. 2618, Ch. 56, L. 2009.

80-12-203. Qualifications of applicants. (1) To be eligible for a loan approved by the authority for issuance of a bond, an applicant:

(a) shall declare the intention to maintain the applicant's residence in Montana during the length of the loan;

(b) must have been approved by a financial institution; and

(c) must have a net worth not to exceed $450,000.

(2) Applications for loans to be approved by the authority for issuance of bonds may be submitted by individuals, partnerships, associations, or joint ventures. All persons involved in the application must meet the requirements of subsection (1). Corporations may not apply.

History: En. Sec. 7, Ch. 580, L. 1983; amd. Sec. 1, Ch. 542, L. 1985; amd. Sec. 214, Ch. 368, L. 1991; amd. Sec. 1, Ch. 18, L. 2009; amd. Sec. 2619, Ch. 56, L. 2009; amd. Sec. 267, Ch. 271, L. 2019.

80-12-204. Evaluation of applicants. (1) The authority shall by rule establish:

(a) procedures and standards for evaluating applications for loans to be approved by the authority for issuance of bonds; and

(b) a system for evaluating the applicants, considering the following criteria:

(i) the applicant's net worth;

(ii) the applicant's access to livestock and machinery;

(iii) the applicant's training and experience in agriculture;

(iv) the applicant's prospects for succeeding in an agricultural operation on the land proposed for purchase; and

(v) any other factors it may prescribe.

(2) The authority shall select the best qualified and most deserving applicants from among those applying for approval of loans for issuance of bonds.

(3) The authority may seek the advice of such lenders as the farmers home administration, the production credit association, the federal land bank, private lenders, or similar organizations in Montana and coordinate its program through these organizations.

History: En. Sec. 8, Ch. 580, L. 1983; amd. Sec. 2, Ch. 542, L. 1985.

80-12-205. Purchase of loans. The authority may purchase loans and make advance commitments to purchase loans from a financial institution at prices and upon terms and conditions established pursuant to 80-12-201 through 80-12-204 and rules promulgated by the authority.

History: En. Sec. 9, Ch. 580, L. 1983.

80-12-206 through 80-12-210 reserved.

80-12-211. Income tax deduction for land sale to beginning farmers. A landowner who sells land consisting of 80 acres or more to a beginning farmer at 9% or less interest on a long-term contract is entitled to a reduction in the landowner's taxable income in an amount

equal to 100% of any income or capital gain, or both, realized and otherwise subject to state income taxes from the sale, up to a maximum of $50,000, if the transaction is approved by the authority for this purpose.

History: En. Sec. 23, Ch. 580, L. 1983; amd. Sec. 4, Ch. 542, L. 1985; amd. Sec. 2620, Ch. 56, L. 2009.

80-12-212 through 80-12-214 reserved.

80-12-215. Loan guaranty program. (1) The authority may guarantee and make commitments to guarantee payment required by a loan funded under this chapter or any other agricultural loan for which a guaranty has been approved by the authority upon such terms and conditions as the authority may prescribe in accordance with this chapter. In administering the guaranty program, the authority may require the payment of a fee or premium, establish application fees, and prescribe application, notification, contract and guaranty forms, rules, and guidelines.

(2) Guaranties by the authority under this chapter must:

(a) be made for a loan that the authority finds meets the policies and objectives of this chapter;

(b) be made to an applicant for a guaranty approved by the authority;

(c) contain amortization provisions satisfactory to the authority; and

(d) be in such principal amount, be in such form, and contain such terms and provisions with respect to payment of property insurance, repairs, alterations, taxes, assessments, delinquency charges, and default remedies as the authority determines to be necessary.

(3) The authority is authorized from time to time to enter into guaranties, insurance contracts, or any other agreements or contracts with respect to the agricultural loan guaranty fund and any guaranteed loan or other credit agreement. Such an agreement or contract may contain terms and provisions necessary or desirable in connection with the guaranty program, subject to the requirements established, including without limitation terms and provisions relating to loan documentation, review, approval procedures, origination and servicing rights and responsibilities, default obligations, procedures and obligations, and obligations with respect to guaranty contracts made under this chapter.

(4) Any contract of guaranty made by the authority under the authorization of this chapter must provide that claims payable thereunder must be paid from amounts available in the agricultural loan guaranty fund and from amounts available under the terms of any applicable contract or agreement with the financial institution that originated the guaranteed loan. The obligation of the authority to make payments under such a contract is limited solely to such sources and does not constitute a debt or liability of the state. A guaranty contract and any rule or guideline of the authority implementing the guaranty program may contain such other terms, provisions, or conditions as the authority considers necessary or appropriate, including without limitation those relating to the payment of guaranty premiums, the giving of notice, claim procedure, the sources of payment for claims, the priority of competing claims for payment, the release or termination of loan security and borrower liability, the timing of payment, the maintenance and disposition of projects and the use of amounts received during periods of loan delinquency or upon default, and any other provision concerning the rights of insured parties or conditions to the payment of guaranty claims. Any premiums for the guarantee of loan payments under the provisions of this chapter may be determined on such basis and be payable by such person in such amounts and at such times as the authority determines, and the amount of the premium need not be uniform among the various loans, leases, or other credit agreements guaranteed.

History: En. Sec. 2, Ch. 448, L. 1985.

80-12-216. Agricultural loan guaranty fund. (1) The authority shall create an agricultural loan guaranty fund. The fund must be held by a trustee or other fiduciary designated by the authority. There must be deposited into the fund amounts, insurance fees, premiums, and such other revenues and assets as the authority considers necessary to comply with any contract or agreement entered into by the authority under this chapter. The authority may borrow from and deposit in the agricultural loan guaranty fund up to $20,000,000 from any available state fund, including funds of the Montana board of housing.

(2) The amounts in the fund must be used to satisfy any claim resulting from a defaulted loan or other credit agreement. The amounts in the fund may also be used for any other purpose prescribed by the authority in accordance with guaranty contracts with financial institutions entered into pursuant to this chapter, including without limitation the protection of the interest of the authority in loans during periods of delinquency or upon default.

(3) The minimum reserve requirement for the agricultural loan guaranty fund must be such amount as may be provided in an agreement, resolution, or indenture with the holders of bonds issued under this chapter, but not in excess of the aggregate annual payments due under the loans or other credit agreements guaranteed by the authority. No loan or other credit agreement may be guaranteed by the authority if the amount of money available in the agricultural loan guaranty fund would be less than the minimum reserve requirement.

(4) In order to assure the maintenance of the agricultural loan guaranty fund, the authority shall, on or before September 1 in each year preceding the convening of the legislature, deliver to the governor a certificate stating the sum, if any, required to restore the agricultural loan guaranty fund to the minimum reserve requirement. The governor shall include in the executive budget submitted to the legislature the sum required to restore the agricultural loan guaranty fund to the minimum reserve requirement. Nothing contained herein shall obligate the legislature to make an appropriation for this purpose.

(5) All amounts remitted to the authority under this section constitute loans to the authority and must be repaid to the state treasury without interest from available operating revenues of the authority in excess of amounts required for the guarantee of loans.

History: En. Sec. 3, Ch. 448, L. 1985.

Part 3
Bonds

80-12-301. Issuance of bonds — credit of the state not pledged. (1) The authority may issue bonds of the state of Montana in a principal amount it determines necessary to provide sufficient funds for achieving any of the purposes of the Montana agricultural loan authority program, including the payment of interest on bonds, establishment of reserves to secure the bonds, and all other expenditures of the authority incident to the program.

(2) Each issue of its bonds is an obligation of the authority, payable out of any revenues, assets, or money generated by the Montana agricultural loan authority program. The authority shall manage its loans so that the bonds are repaid by the revenue generated by the program. The full faith and credit and taxing powers of the state are not pledged for the payment of bonds issued by the authority under the provisions of this chapter.

(3) The bonds must be authorized by resolution of the authority, bear a date, and mature at times the authority determines. A bond may not mature more than 60 years from the date of its issue. The bonds may be issued as serial bonds payable in annual installments or as term bonds or as a combination thereof. The bonds of the authority may be sold at public or private sale, at prices determined by the authority.

(4) The resolution shall specify:

(a) the rate of interest of the bonds;

(b) the denomination of the bonds;

(c) whether the bonds shall be in coupon or registered form and registration privileges, if any;

(d) the manner and place of execution;

(e) the manner, place, and medium of payment; and

(f) the terms of redemption.

(5) The total amount of bonds outstanding at any one time may not exceed $40 million.

History: En. Sec. 10, Ch. 580, L. 1983; amd. Sec. 3, Ch. 542, L. 1985.

80-12-302. Provisions of bond resolutions or trust indentures. A resolution or trust indenture authorizing any bonds or any issue thereof may contain provisions, which shall be a part of the contract or contracts with the holders thereof, as to:

(1) pledging all or any part of the revenues or the property of the authority to secure the payment of the bonds or any issue thereof, subject to existing agreements with bondholders;

(2) pledging all or any part of the assets of the authority, including mortgages and obligations securing them, to secure the payment of the bonds;

(3) specifying the use and disposition of the gross income from mortgages owned by the authority and payment of principal of mortgages owned by the authority;

(4) the setting aside of reserves or sinking funds in the hands of trustees, paying agents, or other depositories and the regulation and disposition of the reserves;

(5) limiting the purpose to which the proceeds of the sale of the bonds may be applied and the pledge of the proceeds to secure the payment of the bonds or of any issue thereof;

(6) limiting the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding bonds;

(7) specifying the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(8) limiting the amount of money to be expended by the authority for its operating expenses;

(9) vesting in a trustee, as the authority determines, property, rights, powers, and duties in trust;

(10) defining the acts or failures to act that will constitute a default in the obligations and duties of the authority to the bondholders and providing for the rights and remedies, consistent with the laws of the state and the provisions of this chapter, of the bondholders if a default occurs, including as a matter of right the appointment of a receiver; and

(11) specifying any other matters that in any way affect the security or protection of the bondholders.

History: En. Sec. 11, Ch. 580, L. 1983.

80-12-303. Trust indenture. In the discretion of the authority, the bonds may be secured by a trust indenture between the authority and a corporate trustee, which may be a trust company or bank having the power of a trust company within or without the state.

History: En. Sec. 15, Ch. 580, L. 1983.

80-12-304. Negotiability of bonds. Bonds issued by the authority are negotiable instruments under the Uniform Commercial Code, subject only to the provisions for registration of bonds.

History: En. Sec. 16, Ch. 580, L. 1983.

80-12-305. Tax exemption of bonds. Bonds issued by the authority under this chapter and their transfer and income, including any profits made on their sale, are exempt from taxation by the state or any political subdivision or other instrumentality of the state, except for estate taxes. The authority is not required to pay recording or transfer fees or taxes on instruments recorded by it.

History: En. Sec. 22, Ch. 580, L. 1983; amd. Sec. 33, Ch. 9, Sp. L. May 2000.

80-12-306. Purchase of bonds — cancellation. The authority, subject to existing agreements with bondholders, may from any funds available for that purpose purchase bonds of the authority, which shall thereupon be canceled, at a price not exceeding:

(1) the current redemption price plus accrued interest to the next interest payment thereon, if the bonds are then redeemable; or

(2) the redemption price applicable on the first date after purchase upon which the bonds become subject to redemption plus accrued interest to that date, if the bonds are not then redeemable.

History: En. Sec. 14, Ch. 580, L. 1983.

80-12-307. Pledge against impairment of contracts. In accordance with the constitutions of the United States and the state of Montana, the state pledges that it will in no way impair the obligations of any agreement between the authority and the holders of notes and bonds issued by the authority.

History: En. Sec. 24, Ch. 580, L. 1983.

80-12-308. Validity of pledge. A pledge made by the authority is valid and binding from the time the pledge is made. The revenues or property pledged and thereafter received by the authority is immediately subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any pledge is valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the authority, irrespective of whether such parties have notice thereof. The resolution, trust indenture, or any other instrument by which a pledge is created need not be recorded.

History: En. Sec. 12, Ch. 580, L. 1983.

80-12-309. Personal liability. The authority members and department members are not personally liable for any debt incurred by the authority.

History: En. Sec. 13, Ch. 580, L. 1983.

80-12-310. Continuing validity of authority members' signatures. If an authority member whose signature appears on bonds or coupons ceases to be a member before the delivery of the bonds, the signature continues to be valid and sufficient for all purposes.

History: En. Sec. 17, Ch. 580, L. 1983; amd. Sec. 2621, Ch. 56, L. 2009.

80-12-311. Accounts of the authority. There is an agricultural loan authority enterprise fund in the enterprise fund type provided for in 17-2-102. All funds from the proceeds of bonds issued under this chapter, fees and other money received by the authority, money appropriated by the legislature for the use of the authority in administering this chapter, and money made available from any other source for the use of the authority must be deposited in the agricultural loan authority enterprise fund except as otherwise provided by law. All funds deposited in the agricultural loan authority enterprise fund are continuously appropriated to and may be expended by the authority for the purposes authorized in this chapter.

History: En. Sec. 18, Ch. 580, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.

80-12-312. Reserve funds and appropriations. (1) The authority shall pay into one or more capital reserve accounts any:

(a) money appropriated and made available by the state for the purpose of the fund;

(b) proceeds of sale of bonds to the extent provided in the resolutions of the authority authorizing their issuance or in any trust indenture securing their repayment; and

(c) other money that may be available to the authority for the purpose of such a fund from any other source.

(2) All amounts held in a capital reserve account must be used solely for the payment of principal, interest, and a redemption premium with respect to bonds secured in whole or in part by the account. Funds in an account may not be withdrawn at any time in an amount that reduces the amount of the account to less than the minimum capital reserve requirement established for the account except for the purpose, with respect to bonds secured in whole or in part by the account, of making payment, when due, of principal, interest, or redemption premiums for the payment of which other money pledged is not available.

History: En. Sec. 19, Ch. 580, L. 1983.

80-12-313. Refunding obligations — sale. Refunding obligations issued as provided in 90-6-121 may be sold or exchanged for outstanding obligations issued under this chapter. The proceeds may be applied to the purchase, redemption, or payment of outstanding obligations. Pending the application of the proceeds to the payment of outstanding obligations, the proceeds may be invested as provided in Title 17, chapter 6, if permitted in the resolution authorizing the issuance of the refunding obligations or in the trust agreement securing them.

History: En. Sec. 20, Ch. 580, L. 1983.

80-12-314. Refunding obligations — issuance. The authority may provide for the issuance of refunding obligations to refund any obligations then outstanding that have been issued under this chapter, including the payment of any redemption premium and any interest accrued or to accrue to the date of redemption of the obligations. The issuance of obligations, the maturities and other details, the rights of the holders, and the rights, duties, and obligations of the authority are governed by the appropriate provisions of this chapter that relate to the issuance of obligations.

History: En. Sec. 21, Ch. 580, L. 1983.

Part 4
Oversight
(Repealed)

80-12-401. Repealed. Sec. 1, Ch. 39, L. 1991.
History: En. Sec. 25, Ch. 580, L. 1983.

80-12-402. Repealed. Sec. 56, Ch. 349, L. 1993.
History: En. Sec. 26, Ch. 580, L. 1983; amd. Sec. 55, Ch. 112, L. 1991.

80-12-403. Repealed. Sec. 56, Ch. 349, L. 1993.
History: En. Sec. 28, Ch. 580, L. 1983.

CHAPTER 13
AGRICULTURAL ASSISTANCE AND COUNSELING PROGRAM
(Repealed)

Part 1 — General Provisions (Repealed)

Part 2 — Mediation of Farmer's Indebtedness (Repealed)

Part 1
General Provisions
(Repealed)

80-13-101. Repealed. Secs. 5, 8, Ch. 269, L. 1989; sec. 1, Ch. 190, L. 1991.
History: En. Sec. 1, Ch. 9, Sp. L. March 1986; amd. Sec. 1, Ch. 605, L. 1987.

80-13-102. Repealed. Secs. 5, 8, Ch. 269, L. 1989; sec. 1, Ch. 190, L. 1991.
History: En. Sec. 2, Ch. 9, Sp. L. March 1986; amd. Sec. 1, Ch. 481, L. 1987; amd. Sec. 2, Ch. 605, L. 1987; amd. Sec. 1, Ch. 269, L. 1989.

80-13-103. Repealed. Secs. 5, 8, Ch. 269, L. 1989; sec. 1, Ch. 190, L. 1991.
History: En. Sec. 3, Ch. 9, Sp. L. March 1986; amd. Sec. 3, Ch. 605, L. 1987; amd. Sec. 2, Ch. 269, L. 1989.

80-13-104. Repealed. Secs. 5, 8, Ch. 269, L. 1989; sec. 1, Ch. 190, L. 1991.
History: En. Sec. 4, Ch. 9, Sp. L. March 1986; amd. Sec. 4, Ch. 605, L. 1987; (4)En. Sec. 6, Ch. 605, L. 1987; amd. Sec. 3, Ch. 269, L. 1989.

80-13-105 through 80-13-110 reserved.

80-13-111. Repealed. Secs. 5, 8, Ch. 269, L. 1989; sec. 1, Ch. 190, L. 1991.
History: En. Sec. 5, Ch. 9, Sp. L. March 1986; amd. Sec. 5, Ch. 605, L. 1987.

Part 2
Mediation of Farmer's Indebtedness
(Repealed)

80-13-201. Repealed. Secs. 5, 8, Ch. 269, L. 1989; sec. 1, Ch. 190, L. 1991.
History: En. Sec. 6, Ch. 9, Sp. L. March 1986.

80-13-202. Repealed. Secs. 5, 8, Ch. 269, L. 1989; sec. 1, Ch. 190, L. 1991.
History: En. Sec. 7, Ch. 9, Sp. L. March 1986.

80-13-203. Repealed. Secs. 5, 8, Ch. 269, L. 1989; sec. 1, Ch. 190, L. 1991.
History: En. Sec. 8, Ch. 9, Sp. L. March 1986.

80-13-204. Repealed. Secs. 5, 8, Ch. 269, L. 1989; sec. 1, Ch. 190, L. 1991.
History: En. Sec. 9, Ch. 9, Sp. L. March 1986.

80-13-205 through 80-13-210 reserved.

80-13-211. Repealed. Secs. 5, 8, Ch. 269, L. 1989; sec. 1, Ch. 190, L. 1991.
History: En. Sec. 10, Ch. 9, Sp. L. March 1986.

80-13-212. Repealed. Secs. 5, 8, Ch. 269, L. 1989; sec. 1, Ch. 190, L. 1991.
History: En. Sec. 11, Ch. 9, Sp. L. March 1986.

80-13-213. Repealed. Secs. 5, 8, Ch. 269, L. 1989; sec. 1, Ch. 190, L. 1991.
History: En. Sec. 12, Ch. 9, Sp. L. March 1986.

80-13-214. Repealed. Secs. 5, 8, Ch. 269, L. 1989; sec. 1, Ch. 190, L. 1991.
History: En. Sec. 2, Ch. 481, L. 1987.

CHAPTER 14
PRODUCTION LOAN LINKED DEPOSIT PROGRAM
(Terminated)

Part 1 — General Provisions (Terminated)

Part 2 — Loans (Terminated)

Part 1
General Provisions
(Terminated)

80-14-101. Terminated. Sec. 5, Ch. 57, L. 1987.
History: En. Sec. 1, Ch. 5, Sp. L. March 1986.

80-14-102. Terminated. Sec. 5, Ch. 57, L. 1987.
History: En. Sec. 2, Ch. 5, Sp. L. March 1986; amd. Sec. 1, Ch. 57, L. 1987; amd. Sec. 14, Ch. 581, L. 1987.

80-14-103. Terminated. Sec. 5, Ch. 57, L. 1987.
History: En. Sec. 3, Ch. 5, Sp. L. March 1986.

Part 2
Loans
(Terminated)

80-14-201. Terminated. Sec. 5, Ch. 57, L. 1987.
History: En. Sec. 4, Ch. 5, Sp. L. March 1986.

80-14-202. Terminated. Sec. 5, Ch. 57, L. 1987.
History: En. Sec. 5, Ch. 5, Sp. L. March 1986; amd. Sec. 2, Ch. 57, L. 1987.

80-14-203. Terminated. Sec. 5, Ch. 57, L. 1987.
History: En. Sec. 6, Ch. 5, Sp. L. March 1986; amd. Sec. 3, Ch. 57, L. 1987.

80-14-204. Terminated. Sec. 5, Ch. 57, L. 1987.
History: En. Sec. 7, Ch. 5, Sp. L. March 1986.

80-14-205. Terminated. Sec. 5, Ch. 57, L. 1987.
History: En. Sec. 8, Ch. 5, Sp. L. March 1986.

CHAPTER 15
MONTANA AGRICULTURAL CHEMICAL GROUND WATER PROTECTION ACT

Part 1 — General Provisions

80-15-101. Short title.
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80-15-203. Evaluation and use of monitoring results.
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80-15-211. General agricultural chemical ground water management plan.
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80-15-214. Contents of specific agricultural chemical ground water management plan.
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80-15-218. Notice to buyer.
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80-15-302. Special funding.

Part 4 — Enforcement

80-15-401. Authority to investigate and inspect.
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80-15-405. Emergencies.
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80-15-412. Administrative civil penalty.
80-15-413. Judicial civil penalty.
80-15-414. Criminal penalties.

Chapter Cross-References

Environmental policy and protection generally, Title 75, ch. 1.
Water quality, Title 75, ch. 5.
Pesticides, Title 80, ch. 8.
Commercial fertilizers, Title 80, ch. 10.

Part 1
General Provisions

80-15-101. Short title. This chapter may be cited as the "Montana Agricultural Chemical Ground Water Protection Act".

History: En. Sec. 1, Ch. 668, L. 1989.

80-15-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Agricultural chemical" means any of the following:

(a) a pesticide as defined in 80-8-102;

(b) an isomer, degradation, or metabolic product of a pesticide; or

(c) a commercial fertilizer as defined in 80-10-101.

(2) "Aquifer" means a water-bearing, subsurface formation capable of yielding sufficient quantities of water to a well for a beneficial use.

(3) "Best management plans" and "best management practices" mean activities, procedures, and practices established by the department, in consultation with the Montana state university-Bozeman extension service, to prevent or remedy the introduction of agricultural chemicals into ground water to the extent technically and economically practical.

(4) "Board" means the board of environmental review provided for in 2-15-3502.

(5) "Confirmatory procedure" means a process for verifying the detection of agricultural chemicals in water, soil, and other related media.

(6) "EPA" means the United States environmental protection agency.

(7) "Ground water" means any water of the state occupying the voids within a geologic formation and within the zone of saturation.

(8) "Interim numerical standard" means a health-based number that expresses the concentration of an agricultural chemical allowed in ground water and that is adopted by a rule of the department of environmental quality pursuant to 80-15-201(3) or (4).

(9) "Margin of safety" means numerical margins that are applied to the no observable effect level in an agricultural chemical toxicology study and that are used by the EPA to extrapolate data obtained from studies of animals to humans, including sensitive individuals.

(10) "No observable effect level" means the highest dose level of an agricultural chemical to which a laboratory animal is exposed, per unit of body weight, at which no effect is observed, as established by EPA's pesticide registration process.

(11) "Nonpoint source" means a diffuse source of agricultural chemicals resulting from human activities over a relatively large area, the effects of which must normally be addressed or controlled by a management or conservation practice.

(12) "Nonpromulgated federal standard" means a health advisory or a suggested no adverse response level that is published but not promulgated by regulation by EPA and that is a suggested measure of the health risk represented by the concentration of an agricultural chemical in water.

(13) "Numerical risk assessment" means a scientific procedure used to measure the statistical probability of human health risk associated with exposure to an agricultural chemical.

(14) "Oncogenic potential" means the potential of an agricultural chemical to cause tumors in laboratory animals and the extrapolation of that potential to humans through use of statistical models and other evidence.

(15) "Person" means any individual, group, firm, cooperative, corporation, association, partnership, political subdivision, state or federal government agency, or other organization or entity.

(16) "Point of standards application" means the specific location in an aquifer where ground water quality and quantity are sampled, measured, evaluated, or otherwise used by either the department or the department of environmental quality to implement the provisions of this chapter.

(17) "Point source" means a point source as defined in 75-5-103, including but not limited to chemical mixing, loading, and storage sites and sites of agricultural chemical spills.

(18) "Promulgated federal standard" means an agricultural chemical maximum contaminant level as established under the federal Safe Drinking Water Act, a national primary drinking water standard, or an interim drinking water regulation or other EPA regulation based on federal law.

(19) "Registrant" means a person as defined in 80-8-102 and 80-10-101.

(20) "Standard" means the numerical value expressing the concentration of an agricultural chemical in ground water that, when exceeded, presents a potential human health risk over a lifetime of consumption and that is adopted by a rule of the department of environmental quality as required by 80-15-201.

(21) "Use" means any act of handling or release of an agricultural chemical or exposure of humans or the environment to an agricultural chemical, including but not limited to application, mixing, loading, storage, disposal, or transportation.

History: **En. Sec. 2, Ch. 668, L. 1989; amd. Sec. 331, Ch. 418, L. 1995; amd. Secs. 547, 568, Ch. 546, L. 1995; amd. sec. 36, Ch. 308, L. 1995.**

80-15-103. Policy. It is the public policy of this state to:

(1) protect ground water and the environment from impairment or degradation due to the use of agricultural chemicals;

(2) allow for the proper and correct use of agricultural chemicals;

(3) provide for the management of agricultural chemicals to prevent, minimize, and mitigate their presence in ground water; and

(4) provide for education and training of agricultural chemical applicators and the general public on ground water protection, agricultural chemical use, and the use of alternative agricultural methods.

History: **En. Sec. 3, Ch. 668, L. 1989.**

80-15-104. Administration. (1) The department and the department of environmental quality shall administer this chapter.

(2) The department of environmental quality is responsible for the establishment and enforcement of agricultural chemical ground water standards and interim numerical standards as authorized by 80-15-201, ground water monitoring as authorized by 80-15-202 and 80-15-203, providing comments to the department during the development of agricultural chemical ground water management plans, promoting research as set forth in 80-15-107, and related responsibilities set forth in Title 75, chapter 5.

(3) The department is responsible for the preparation, implementation, and enforcement of agricultural chemical ground water management plans as authorized by 80-15-211 through 80-15-218, 80-15-401 through 80-15-405, and 80-15-411 through 80-15-414, public education as authorized by 80-15-106, ground water monitoring as authorized by 80-15-202 and 80-15-203, other duties related to promoting research as set forth in 80-15-107, and related responsibilities set forth in Title 80, chapters 8 and 10.

(4) This chapter does not limit the department's responsibility to enforce agricultural chemical label directions and prohibitions.

(5) The administration of this chapter, including rulemaking and hearing functions authorized by this chapter, must be conducted in accordance with the Montana Administrative Procedure Act, Title 2, chapter 4.

History: En. Sec. 4, Ch. 668, L. 1989; amd. Sec. 332, Ch. 418, L. 1995.

80-15-105. Rulemaking. (1) The department of environmental quality, subject to the provisions of 80-15-110, shall adopt rules for the administration of this chapter for which the department of environmental quality has responsibility. These rules must include but are not limited to:

(a) standards and interim numerical standards for agricultural chemicals in ground water as authorized by 80-15-201;

(b) procedures for ground water monitoring as authorized by 80-15-202 and 80-15-203;

(c) field and laboratory operational quality assurance, quality control, and confirmatory procedures that are authorized by 80-15-107, 80-15-202, and 80-15-203 and that may include, through adoption by reference, procedures that have been established or approved by EPA for quality assurance and quality control;

(d) standards for maintaining the confidentiality of data and information declared confidential by EPA and the confidentiality of chemical registrant data and information protected from disclosure by federal or state law as required by 80-15-108; and

(e) administrative civil penalties as authorized by 80-15-412.

(2) The department shall adopt rules necessary to carry out its responsibilities under this chapter. These rules must include but are not limited to:

(a) procedures for ground water monitoring as authorized by 80-15-202 and 80-15-203;

(b) the content and procedures for development of agricultural chemical ground water management plans, including the content of best management practices and best management plans, procedures for obtaining comments from the department of environmental quality on the plans, and the adoption of completed plans and plan modifications as authorized by 80-15-211 through 80-15-218;

(c) standards for maintaining the confidentiality of data and information declared confidential by EPA and of chemical registrant data and information protected from disclosure by federal or state law as required by 80-15-108;

(d) field and laboratory operational quality assurance, quality control, and confirmatory procedures that are authorized by 80-15-107, 80-15-202, and 80-15-203 and that may include, through adoption by reference, procedures that have been established or approved by EPA for quality assurance and quality control;

(e) emergency procedures as authorized by 80-15-405;

(f) procedures for issuance of compliance orders as authorized by 80-15-403; and

(g) procedures for the assessment of administrative civil penalties as authorized by 80-15-412.

History: En. Sec. 5, Ch. 668, L. 1989; amd. Sec. 333, Ch. 418, L. 1995; amd. Sec. 20, Ch. 471, L. 1995; amd. Sec. 79, Ch. 324, L. 2021.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

80-15-106. Educational programs. (1) The department, in cooperation with the Montana state university-Bozeman extension service, shall develop and conduct appropriate educational programs to promote the policy specified in 80-15-103. The department and the Montana state university-Bozeman extension service may charge a fee for the educational programs, commensurate with the costs of program development and administration.

(2) All fees collected by the department pursuant to this section must be deposited in the state special revenue fund. The department may spend the funds for the purposes set forth in this section.

(3) All fees collected by the Montana state university-Bozeman extension service must be deposited in a special account identified for this purpose. The extension service may spend the funds for the purposes set forth in this section.

History: En. Sec. 6, Ch. 668, L. 1989; amd. sec. 36, Ch. 308, L. 1995.

80-15-107. Research. The department or the department of environmental quality shall promote, for the purposes described in 80-15-103, cooperative ground water research programs with units of the university system and associated agricultural experiment stations, the bureau of mines and geology, and other appropriate agencies, organizations, and individuals.

History: En. Sec. 7, Ch. 668, L. 1989; amd. Sec. 334, Ch. 418, L. 1995.

80-15-108. Confidentiality. (1) The department and the department of environmental quality shall maintain the confidentiality of data declared confidential by EPA and chemical registrant data and information protected from disclosure by federal or state law.

(2) The department of environmental quality shall comply with the requirements of 75-5-105 and the department shall comply with the requirements of 80-8-107 and 80-10-210, except as otherwise provided by this section.

History: En. Sec. 8, Ch. 668, L. 1989; amd. Sec. 335, Ch. 418, L. 1995.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

80-15-109 reserved.

80-15-110. State regulations no more stringent than federal regulations or guidelines. (1) After April 14, 1995, except as provided in subsections (2) through (5) or unless required by state law, the department of environmental quality may not adopt a rule to implement this chapter that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The department of environmental quality may incorporate by reference comparable federal regulations or guidelines.

(2) The department of environmental quality may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if it makes a written finding after a public hearing and public comment and based on evidence in the record that:

(a) the proposed state standard or requirement protects public health or the environment of the state; and

(b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.

(4) (a) A person affected by a rule of the board adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable federal regulations or guidelines may petition the board to review the rule. If the board determines that the rule is more stringent than comparable federal regulations or guidelines, the department of environmental quality shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The board may charge a petition filing fee in an amount not to exceed $250.

(b) A person may also petition the board for a rule review under subsection (4)(a) if the board adopted a rule after January 1, 1990, and before July 1, 2021, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted board rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1).

History: En. Sec. 1, Ch. 471, L. 1995; amd. Sec. 80, Ch. 324, L. 2021.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Part 2
Control

80-15-201. Ground water standards. (1) The department of environmental quality shall adopt standards and, as applicable, interim numerical standards for agricultural chemicals in ground water. The standards must be the same as any promulgated or nonpromulgated federal standard established by EPA, although the department of environmental quality may determine, pursuant to the requirements of subsection (4), that an interim numerical standard different from either a promulgated or nonpromulgated federal standard is justified. Promulgated federal standards must receive preference. Except as provided in subsections (3) and (4), if more than one nonpromulgated federal standard exists for an agricultural chemical, the department of environmental quality must adopt the most recently established nonpromulgated federal standard.

(2) The department of environmental quality is not required to adopt a standard or interim numerical standard for each agricultural chemical registered in the state. The only standards and interim numerical standards required are for those agricultural chemicals:

(a) that are addressed by promulgated and nonpromulgated federal standards;

(b) the presence of which has been verified in ground water as provided in 80-15-202; or

(c) that the department and the department of environmental quality predict may appear in ground water, in accordance with the procedures and determinations specified in 80-15-202 and 80-15-203.

(3) If a promulgated federal standard has not been adopted or a nonpromulgated federal standard has not been published for an agricultural chemical for which the department of environmental quality is required to establish a standard or interim numerical standard as specified in subsections (2)(b) and (2)(c), the department of environmental quality shall request EPA to establish a promulgated or nonpromulgated federal standard. If the department of environmental quality determines that EPA cannot comply with the request within 15 days, the department of environmental quality shall adopt an interim numerical standard, provided that the department of environmental quality shall review the interim numerical standard whenever EPA adopts a promulgated federal standard or publishes a nonpromulgated federal standard for the agricultural chemical in question.

(4) The department of environmental quality may adopt an interim numerical standard that is different from either a promulgated or nonpromulgated federal standard if there is significant new and relevant technical information available that is scientifically valid. The department of environmental quality shall review the interim numerical standard when EPA establishes or revises the promulgated or nonpromulgated federal standard for the agricultural chemical in question.

(5) The department of environmental quality shall consider the following in adopting any interim numerical standard under either subsection (3) or (4):

(a) effects on a person weighing 70 kilograms and drinking 2 liters of water per day over a lifetime; and

(b) EPA's conclusions regarding the no observable effect level, including the margin of safety identified by EPA, when scientific data indicates oncogenic potential for the agricultural chemical and EPA has determined that a numerical risk assessment is not justified, is inappropriate, or does not serve as the primary toxicological basis for regulation.

(6) Nothing in this section may interfere with the department of environmental quality's responsibility to adopt rules and standards under Title 75, chapter 6.

History: En. Sec. 9, Ch. 668, L. 1989; amd. Sec. 336, Ch. 418, L. 1995; amd. Sec. 81, Ch. 324, L. 2021.

80-15-202. Monitoring programs. (1) The department or the department of environmental quality shall conduct monitoring programs to determine:

(a) whether residues of agricultural chemicals are present in ground water; and

(b) the likelihood of an agricultural chemical to enter ground water, if either department determines that sufficient valid scientific data is available to reasonably predict the behavior of a particular agricultural chemical in the soil.

(2) The department and the department of environmental quality shall evaluate all information relating to this section that is received from any person, based upon standard procedures, protocols, and confirmatory procedures established by rule. Information found to be insufficient based on the adopted procedures and protocols, including analytical results, may be used only for informational purposes.

History: En. Sec. 10, Ch. 668, L. 1989; amd. Sec. 5, Ch. 189, L. 1995; amd. Sec. 337, Ch. 418, L. 1995.

80-15-203. Evaluation and use of monitoring results. (1) When providing preliminary monitoring results or confirmed monitoring results to ground water users or the public, the department and the department of environmental quality shall also provide any applicable standard or interim numerical standard.

(2) When monitoring results reveal the presence of an agricultural chemical in ground water:

(a) the department of environmental quality is the lead department for determining health risks; and

(b) the department is the lead department for determining compliance with agricultural chemical ground water management plans authorized by 80-15-211 through 80-15-218 and with agricultural chemical registration, use, and labeling requirements and conditions pursuant to Title 80, chapters 8 and 10.

(3) The department and the department of environmental quality shall cooperatively evaluate the results of monitoring programs authorized by 80-15-202.

(4) Based on the results of monitoring, the department and the department of environmental quality shall implement appropriate actions specified in this chapter to mitigate any existing impacts of an agricultural chemical found in ground water and to prevent future impacts of an agricultural chemical that may be found in ground water, in relation to human health, agriculture, and the environment.

(5) The department may not undertake compliance and enforcement actions authorized by this chapter and the department of environmental quality may not undertake compliance and enforcement actions authorized by Title 75, chapter 5, unless there is sufficient evidence collected through:

(a) monitoring at a point of standards application that reveals that a person using an agricultural chemical or introducing or discharging the chemical into ground water has violated a provision of 80-15-402 or Title 75, chapter 5;

(b) other investigations that reveal that a person using an agricultural chemical or introducing or discharging the chemical into ground water has violated a provision of 80-15-402 or Title 75, chapter 5; or

(c) monitoring that reveals a significant probability for an agricultural chemical to enter ground water.

History: En. Sec. 11, Ch. 668, L. 1989; amd. Sec. 338, Ch. 418, L. 1995.

80-15-204 through 80-15-210 reserved.

80-15-211. General agricultural chemical ground water management plan. The department shall develop and implement a general state agricultural chemical ground water management plan to achieve the policies of 80-15-103. This plan must include general program elements set forth in this chapter and best management plans and best management practices. Prior to publication of the plan, the department shall provide a 30-day period for the department of environmental quality to prepare and submit comments on the plan.

History: En. Sec. 12(1), Ch. 668, L. 1989; amd. Sec. 339, Ch. 418, L. 1995.

80-15-212. Specific agricultural chemical ground water management plans. (1) Except as provided in 80-15-216, the department shall develop and implement agricultural chemical ground water management plans specific to particular agricultural chemicals and to a defined geographical area when the level of an agricultural chemical found in ground water is at 50% or greater of the standard or interim numerical standard at a point of standards application and is scientifically validated.

(2) The department may develop and implement an agricultural chemical ground water management plan specific to particular agricultural chemicals and may consider but is not limited to considering the following elements when determining whether or not to develop and implement agricultural chemical ground water management plans:

(a) a definite trend of increased presence of the agricultural chemical in ground water at a point of standards application is scientifically validated;

(b) agricultural chemicals have been determined to have migrated in the ground water from the point of detection;

(c) EPA proposes to suspend or cancel registration of an agricultural chemical, prohibits or restricts the chemical's sale or use in the state, or otherwise initiates action against a chemical because of ground water concerns, and EPA's action, restriction, or prohibition will be implemented unless the state develops an adequate management plan; or

(d) agricultural chemicals that possess or are suspected of possessing properties that indicate potential to migrate to ground water are being applied on areas underlain by ground water that is vulnerable to impairment.

(3) The department may initiate educational programs about agricultural chemical management to provide information and management techniques to protect ground water in an effort to preclude the need for development of specific agricultural chemical ground water management plans in the future.

(4) A person using an agricultural chemical that is addressed by a specific agricultural chemical ground water management plan in the geographical region that is addressed by the plan shall comply with the plan. The department may specifically identify and designate persons who are under the plan and may inform any person about the plan.

(5) The department shall prioritize preparation of specific agricultural chemical ground water management plans in consideration of the specific circumstances of each area and within available resources.

History: En. Sec. 12(2) thru (4), Ch. 668, L. 1989; amd. Sec. 1, Ch. 561, L. 2005.

80-15-213. Beneficial use to be considered in developing management plans — water classification. (1) (a) In developing general and specific agricultural chemical ground water management plans, the department shall consider the current and potential beneficial use of the ground water included in or affected by the plans.

(b) If the ground water has not been classified:

(i) the department shall consider it to be included in the classification representing the highest quality of ground water until the ground water is classified by the department of environmental quality; and

(ii) the department may proceed to develop an agricultural chemical ground water management plan as provided in 80-15-212(1) and (2).

(2) The department may request the department of environmental quality to classify certain ground water and may collect the data and information required by the department of environmental quality to classify the ground water. If adequate technical data and financial resources are available as determined by the department of environmental quality, the department of environmental quality shall classify ground water at locations as requested by the department.

History: En. Sec. 12(5), (6), Ch. 668, L. 1989; amd. Sec. 340, Ch. 418, L. 1995; amd. Sec. 2, Ch. 561, L. 2005.

80-15-214. Contents of specific agricultural chemical ground water management plan. (1) A specific agricultural chemical ground water management plan must include:

(a) requirements to prevent ground water impairment that are based on ground water use, value, and vulnerability and that address all applicable aspects of agricultural chemical use; and

(b) requirements to prevent or minimize further presence of the agricultural chemical in the ground water and to provide protection for the present and future beneficial use of the ground water.

(2) A specific agricultural chemical ground water management plan may include but is not limited to the following elements:

(a) identification of geographical areas where an agricultural chemical may be used;

(b) ground water, soil, meteorological, and geological characteristics;

(c) best management plans and best management practices;

(d) identification of high-priority ground water;

(e) certification, licensing, training, and education requirements for persons using agricultural chemicals;

(f) identification of setback areas around water wells where certain activities may be restricted;

(g) agricultural chemical application rates and timing and related use criteria;

(h) alternative pest management techniques, including integrated pest management;

(i) other requirements for pesticides, as set forth in Title 80, chapter 8, and related rules, and for fertilizers, as set forth in Title 80, chapter 10, and related rules;

(j) EPA requirements; and

(k) alternative soil fertility practices.

History: En. Sec. 12(7), (8), Ch. 668, L. 1989.

80-15-215. Benefits of appropriate agricultural chemical use to be considered. (1) When developing and implementing a specific agricultural chemical ground water management plan, the department shall consider the benefits of appropriate use of the agricultural chemical and shall consult with the Montana state university-Bozeman extension service.

(2) Within available resources, the department shall contact users of an agricultural chemical and user groups that will be subject to a general or specific agricultural chemical ground water management plan to request their recommendations concerning the development of the plan.

History: En. Sec. 12(9), (10), Ch. 668, L. 1989; amd. sec. 36, Ch. 308, L. 1995.

80-15-216. Commercial fertilizer ground water management plan. The department may develop and implement a commercial fertilizer ground water management plan if the department and the department of environmental quality determine that residues from commercial fertilizer are present in the ground water or when EPA implements a program to protect ground water from fertilizers.

History: En. Sec. 12(11), Ch. 668, L. 1989; amd. Sec. 341, Ch. 418, L. 1995.

80-15-217. Management plans — rulemaking — review. (1) The department shall adopt specific agricultural chemical ground water management plans through rulemaking; however, the department may implement emergency plans as set forth in 80-8-105(4) or as authorized by the Montana Administrative Procedure Act. Prior to rulemaking, the department shall provide to the department of environmental quality a copy of each proposed specific agricultural chemical ground water management plan. A 30-day period must be provided for the department of environmental quality to prepare comments on the plan.

(2) The department shall review agricultural chemical ground water management plans periodically to determine if the requirements contained in the plans need to be modified based on new scientific data and information. Plan modifications must be accomplished by rulemaking.

History: En. Sec. 12(12), (13), Ch. 668, L. 1989; amd. Sec. 342, Ch. 418, L. 1995.

80-15-218. Notice to buyer. A person who sells agricultural land that is subject to the provisions of a specific agricultural chemical ground water management plan shall provide the buyer with written notice about the buyer's obligations under the plan and shall forward a copy of the notice to the department. The department is not responsible for enforcement of this section.

History: En. Sec. 12(14), Ch. 668, L. 1989; amd. Sec. 2622, Ch. 56, L. 2009.

80-15-219. Repealed. Sec. 500, Ch. 418, L. 1995.

History: En. Sec. 13, Ch. 668, L. 1989.

Part 3
Funding

80-15-301. Agricultural chemical ground water protection accounts — acceptance and expenditure of gifts, grants, and funds. (1) There is a department of agriculture agricultural chemical ground water protection special revenue account and a department of environmental quality agricultural chemical ground water protection special revenue account within the state special revenue fund established by 17-2-102.

(2) Both accounts named in subsection (1) may receive funds from any source as gifts, grants, cost-share funds, or other funds designated for agricultural chemical ground water protection purposes.

(3) The department and the department of environmental quality may individually or jointly spend funds received by their respective accounts for the purposes authorized by this chapter.

History: En. Sec. 14, Ch. 668, L. 1989; amd. Sec. 343, Ch. 418, L. 1995.

80-15-302. Special funding. (1) A fee of $95 is assessed for the registration of pesticides in addition to the fee imposed by 80-8-201.

(2) The money collected from the registration fee established by subsection (1) must be deposited in the state special revenue fund as follows:

(a) Each of the following state agencies must be credited $15,000 for purposes of administering or assisting the department in administering this chapter:

(i) department of environmental quality; and

(ii) Montana state university-Bozeman extension service.

(b) The department must be credited with the remainder of the registration fee money to use in administering this chapter.

(3) A fee of $10 is assessed for the registration of fertilizers in addition to the fees imposed by 80-10-201(1)(a)(i) and (1)(a)(ii). The additional fee must be used for the ground water protection responsibilities of the department relating to fertilizers. Revenues collected from this fee must be credited to the commercial fertilizer agricultural chemical ground water account within the state special revenue fund for the administration of this chapter.

(4) The department may direct the board of investments to invest the portion of the money collected under this section that is credited to the department pursuant to the provisions of 17-6-201. The income from the investments must be deposited in the state special revenue fund and credited to the department.

History: En. Sec. 15, Ch. 668, L. 1989; amd. Sec. 5, Ch. 588, L. 1991; amd. Sec. 344, Ch. 418, L. 1995; amd. sec. 36, Ch. 308, L. 1995; amd. Sec. 2, Ch. 141, L. 2001; amd. Sec. 16, Ch. 395, L. 2009; amd. Sec. 13, Ch. 244, L. 2017.

Part 4
Enforcement

80-15-401. Authority to investigate and inspect. Authorized representatives of the department, consistent with the responsibilities set forth in this chapter and upon presentation of department-issued credentials, may at reasonable times or under emergency conditions enter upon any public or private property to:

(1) investigate conditions relating to compliance with agricultural chemical labels, agricultural chemical ground water management plans, monitoring requirements, or ground water protection requirements and to investigate violations of plans or compliance orders;

(2) gain access to and copy any records required by the department in the administration of this chapter;

(3) establish and inspect monitoring equipment; and

(4) sample ground water, including drinking water supply sources such as wells and similar structures.

History: En. Sec. 16, Ch. 668, L. 1989.

80-15-402. Prohibited activity. It is unlawful for a person to:

(1) violate any provision of a specific agricultural chemical ground water management plan;

(2) violate any lawful order issued pursuant to this chapter; or

(3) violate any provision of this chapter.

History: En. Sec. 17, Ch. 668, L. 1989.

80-15-403. Compliance orders. (1) In furtherance of 80-15-402, the department may issue a compliance order to a person who violates a standard, an interim numerical standard, or any other requirement established pursuant to this chapter. The department shall coordinate its proposed actions pursuant to this section with proposed actions of the department of environmental quality pursuant to 75-5-613, if any. Issuance of a compliance order under this chapter precludes the department from taking other enforcement actions for the same violation under Title 80, chapter 8 or 10.

(2) (a) The department may issue a compliance order to a person who violates any requirement established pursuant to this chapter. This subsection does not apply:

(i) to commercial wood treatment facilities; or

(ii) when agricultural chemicals have caused or are likely to cause contamination of a public water supply system, as defined in 75-6-102.

(b) The provisions of this subsection (2) are not intended to void or affect indemnity or liability agreements between the person who owns, leases, or has possession or control of the site and the person who sold the site, who is the lessor, or who has relinquished possession or control of the site.

(3) When issuing a compliance order, the department may require a person who has violated a provision of 80-15-402 to conduct monitoring to assist in determining the presence or level of concentration of an agricultural chemical in ground water and the effectiveness of cleanup efforts. The department shall specify criteria in the compliance order for determining the duration of monitoring.

(4) A compliance order must specify the requirement violated and must set a time for compliance. In establishing a time for compliance, the department shall take into account the seriousness of the violation and any good faith efforts that the person has made to comply with the requirement that has been violated. A compliance order issued under this section must be served either personally by a person qualified to perform service under the Montana Rules of Civil Procedure or by certified mail.

History: En. Sec. 18, Ch. 668, L. 1989; amd. Sec. 6, Ch. 189, L. 1995; amd. Sec. 1, Ch. 192, L. 1995; amd. Sec. 345, Ch. 418, L. 1995.

80-15-404. Injunctions authorized. The department may commence a civil action seeking appropriate relief, including a permanent or temporary injunction pursuant to 80-8-306 or 80-10-303, as applicable, for a violation that is subject to a compliance order under 80-15-403.

History: En. Sec. 19, Ch. 668, L. 1989.

Cross-References

Injunctions, Title 27, ch. 19.

80-15-405. Emergencies. Notwithstanding any other provisions of this chapter, if the department finds that an emergency exists that requires immediate action to protect ground water from agricultural chemicals or to prevent use of ground water impaired or likely to be impaired by agricultural chemicals, the department may, without notice or hearing, issue necessary orders or adopt rules to protect public health, welfare, and safety. The duration of an emergency order or rule is limited to the emergency provisions of the Montana Administrative Procedure Act as specified in 2-4-303.

History: En. Sec. 20, Ch. 668, L. 1989.

80-15-406 through 80-15-410 reserved.

80-15-411. Violators subject to penalties. (1) A person found to be in violation of this chapter or a rule established pursuant to this chapter is subject to the penalty provisions of 80-15-412 through 80-15-414.

(2) For the purpose of this section, the term "person" means, in addition to the definition in 80-15-102, any responsible corporate officer.

(3) Nothing in this chapter may be construed as requiring the department or an authorized agent of the department to report minor violations of this chapter for prosecution when the

department or an authorized agent believes that the public interest will be best served by other remedial action, by a suitable notice of warning in writing, or by a lawful written order.

(4) Action under 80-15-412 through 80-15-414 does not bar the department from enforcement of this chapter or of rules or orders issued under this chapter by injunction or other appropriate remedy.

(5) The department and the department of environmental quality shall coordinate actions when a violator is subject to the penalties authorized by 80-15-412 through 80-15-414 and to the penalties authorized by Title 75, chapter 5, for the same violation.

History: En. Sec. 21, Ch. 668, L. 1989; amd. Sec. 346, Ch. 418, L. 1995.

80-15-412. Administrative civil penalty. (1) A person who commits a violation of this chapter may be assessed an administrative civil penalty by the department of not more than $1,000 for each offense. Farm applicators possessing a pesticide permit or using a fertilizer may not be assessed an administrative civil penalty of more than $500 for the first offense. Assessment of a civil penalty may be made in conjunction with any other warning, order, or administrative action authorized by this chapter or Title 75, chapter 5, that is issued or undertaken by either the department or the department of environmental quality.

(2) An administrative civil penalty may not be assessed unless the person charged is given notice and opportunity for a hearing pursuant to Title 2, chapter 4, part 6, of the Montana Administrative Procedure Act.

(3) In determining an appropriate administrative civil penalty, the department shall consider the effect on the person's ability to continue in business, the gravity of the violation that occurred, the degree of care exercised by the offender, and whether significant harm resulted to public health, agricultural crops, livestock, or the environment.

(4) If the department is unable to collect the administrative civil penalty or if a person fails to pay all or a set portion of the administrative civil penalty as determined by the department, the department may seek to recover the amount in the appropriate district court.

(5) A person against whom the department has assessed an administrative civil penalty may, within 30 days of the final agency action making the assessment, appeal the assessment to the district court of the county in which the violation is alleged to have occurred. A jury trial must be granted when demanded under Rule 38 of the Montana Rules of Civil Procedure.

History: En. Sec. 22, Ch. 668, L. 1989; amd. Sec. 7, Ch. 189, L. 1995; amd. Sec. 347, Ch. 418, L. 1995.

80-15-413. Judicial civil penalty. A person who commits a violation as specified in 80-15-402 shall be subject to a judicial civil penalty not to exceed $10,000. Each occurrence constitutes a separate violation.

History: En. Sec. 23, Ch. 668, L. 1989.

80-15-414. Criminal penalties. (1) A person who intentionally commits a violation as specified in 80-15-402 is guilty of an offense and subject to a fine not to exceed $25,000 for each day the violation continues or imprisonment for not more than 1 year, or both. Following an initial conviction under this section, a subsequent conviction subjects a person to a fine of not more than $50,000 for each day the violation continues or imprisonment for not more than 2 years, or both.

(2) Except as otherwise provided in this chapter, a person convicted of violating any of the provisions of this chapter or rules issued under this chapter or who misrepresents, impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the department from performance of its duties in connection with the provisions of this chapter is guilty of a misdemeanor and shall be fined not less than $100 but not more than $1,500.

(3) A person who knowingly makes any false statement, representation, or certification in any record, report, or other document filed or required to be maintained under this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter shall, upon conviction, be punished by a fine of not more than $5,000 or by imprisonment for not more than 6 months, or both.

(4) A person who with intent to defraud uses or reveals confidential information and data provided under this chapter or rules issued under this chapter shall, upon conviction, be fined not more than $5,000 or imprisoned for not more than 1 year, or both.

History: En. Sec. 24, Ch. 668, L. 1989.

CHAPTERS 16 AND 17
RESERVED

CHAPTER 18
ALTERNATIVE AGRICULTURAL CROPS

Part 1 — Hemp

80-18-101. Definitions.
80-18-102. Hemp authorized as agricultural crop.
80-18-103. Hemp — licensing.
80-18-104 and 80-18-105 reserved.
80-18-106. Hemp production — notification requirements.
80-18-107. Rulemaking authority.
80-18-108 and 80-18-109 reserved.
80-18-110. Disposition of fees.
80-18-111. Affirmative defense for possession or cultivation of marijuana.

Part 1
Hemp

80-18-101. Definitions. As used in this part, the following definitions apply:

(1) (a) "Hemp" means the plant species Cannabis sativa L. and any part of that plant, including the seeds and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a total delta-9 tetrahydrocannabinol concentration of not more than 0.3% on a dry weight basis.

(b) The term does not include synthetic cannabinoids.

(2) "Hemp crude" means a hemp derivative in a temporary state of not complying with the legal definition of hemp, the amount of tetrahydrocannabinol, or the amount of tetrahydrocannabinolic acid that will be further processed in order to comply.

(3) "Hemp derivatives" means all products that contain or are processed from, extracted from, or manufactured from hemp.

(4) "Marijuana" means all plant material from the genus Cannabis containing tetrahydrocannabinol (THC) or seeds of the genus capable of germination.

(5) "Synthetic cannabinoids" has the meaning provided in 50-32-222 and includes any cannabinoids produced artificially, whether from chemical synthesis or biosynthesis using recombinant biological agents, including but not limited to yeast and algae.

History: En. Sec. 1, Ch. 360, L. 2001; amd. Sec. 1, Ch. 289, L. 2019; amd. Sec. 1, Ch. 59, L. 2021; amd. Sec. 12, Ch. 746, L. 2023.

80-18-102. Hemp authorized as agricultural crop. Hemp is considered an agricultural crop in this state. Upon meeting the requirements of 80-18-103, an individual in this state may plant, grow, harvest, possess, process, sell, or buy hemp, including cultivatable seeds or plants.

History: En. Sec. 2, Ch. 360, L. 2001; amd. Sec. 2, Ch. 289, L. 2019; amd. Sec. 2, Ch. 59, L. 2021.

80-18-103. Hemp — licensing. (1) An individual growing hemp or selling propagatable hemp or hemp seeds shall apply to the department for a license on a form prescribed by the department.

(2) The application for a license must include the name and address of the applicant and the legal description of the land area to be used for the production of hemp and any additional information required by rule.

(3) The licensing requirements of this part do not apply to employees of the agricultural experiment station or the Montana state university-Bozeman extension service involved in research and extension-related activities.

History: En. Sec. 3, Ch. 360, L. 2001; amd. Sec. 3, Ch. 289, L. 2019; amd. Sec. 3, Ch. 59, L. 2021.

80-18-104 and 80-18-105 reserved.

80-18-106. Hemp production — notification requirements. Each licensee shall file with the department:

(1) documentation showing the type and variety of seeds; and

(2) a copy of any contract to grow hemp.

History: En. Sec. 4, Ch. 360, L. 2001; amd. Sec. 4, Ch. 289, L. 2019; amd. Sec. 4, Ch. 59, L. 2021.

80-18-107. Rulemaking authority. The department shall adopt rules that include but are not limited to:

(1) testing of the hemp during growth to determine tetrahydrocannabinol levels;

(2) supervision of the hemp during its growth and harvest;

(3) assessment of a fee that is commensurate with the costs of the department's activities in licensing, testing, and supervising hemp production;

(4) a hemp definition that complies with United States department of agriculture requirements and state regulation;

(5) regulations for hemp derivatives and hemp crude, including licensing, fees, and transportation requirements;

(6) necessary licensing requirements; and

(7) any other rules and procedures necessary to carry out this part.

History: En. Sec. 5, Ch. 360, L. 2001; amd. Sec. 5, Ch. 289, L. 2019; amd. Sec. 5, Ch. 59, L. 2021.

80-18-108 and 80-18-109 reserved.

80-18-110. Disposition of fees. All fees assessed as provided in 80-18-107 must be deposited with the state treasurer to the credit of the state special revenue fund for the use of the department for administering and enforcing this part.

History: En. Sec. 6, Ch. 360, L. 2001.

80-18-111. Affirmative defense for possession or cultivation of marijuana. It is an affirmative defense to a prosecution for the possession or cultivation of marijuana that the defendant was growing or processing hemp in compliance with this part or a tribal plan approved by the United States department of agriculture.

History: En. Sec. 7, Ch. 360, L. 2001; amd. Sec. 6, Ch. 289, L. 2019; amd. Sec. 6, Ch. 59, L. 2021.

Cross-References

Criminal possession of dangerous drugs, 45-9-102.
Criminal possession with intent to distribute, 45-9-103.
Criminal production or manufacture of dangerous drugs, 45-9-110.
Annual registration required for manufacturer, distributor, or dispenser, 50-32-301.

CHAPTER 19
RESERVED

CHAPTER 20
AGRICULTURAL RESEARCH

Part 1 — Crop Research Facilities Protection Act

80-20-101. Short title.
80-20-102. Definitions.
80-20-103. Unlawful acts.
80-20-104. Action for damage.

Part 1
Crop Research Facilities Protection Act

80-20-101. Short title. This part may be cited as the "Crop Research Facilities Protection Act".

History: En. Sec. 1, Ch. 441, L. 2001.

80-20-102. Definitions. As used in this part, the following definitions apply:

(1) "Consent" means agreement in fact, whether express or apparent.

(2) "Crop" means a product grown, developed, or raised for purposes including but not limited to human or animal consumption, research, industrial use, commercial use, or pharmacological use.

(3) "Deprive" means to:

(a) withhold a crop or other property from the owner permanently or for such a period of time that a major portion of the value or enjoyment of the crop or property is lost to the owner;

(b) restore the crop or other property only upon payment of reward or other compensation; or

(c) dispose of a crop or other property in a manner that makes recovery of the crop or property by the owner unlikely.

(4) "Effective consent" means consent by the owner or by a person legally authorized to act for the owner. Consent is not effective if it is:

(a) induced by force or threat;

(b) given by a person who the person to whom it is given knows is not legally authorized to act for the owner; or

(c) given by a person who by reason of youth, mental disease or disorder, or being under the influence of drugs or alcohol is known by the person to whom it is given to be unable to make reasonable decisions.

(5) "Notice" means:

(a) oral or written communication by the owner or someone with apparent authority to act for the owner;

(b) fencing or other enclosure obviously designed to exclude intruders or to contain crops; or

(c) a sign or signs posted on the property or at the entrance to a building that are reasonably likely to come to the attention of intruders and that indicate that entry is forbidden.

(6) "Owner" means a person who has:

(a) title to the property; or

(b) lawful possession of the property.

(7) "Person" means an individual, state agency, corporation, association, nonprofit corporation, joint-stock company, firm, trust, or partnership; two or more persons having a joint or common interest; or some other legal entity.

(8) "Possession" means actual care, custody, control, or management.

(9) "Research facility" means a public or private place, laboratory, institution, medical care facility, elementary school, high school, college, or university at which a scientific test, experiment, or investigation involving the use of a crop is lawfully carried out, conducted, or attempted.

History: En. Sec. 2, Ch. 441, L. 2001; amd. Sec. 25, Ch. 161, L. 2015.

80-20-103. Unlawful acts. (1) A person who does not have the effective consent of the owner may not acquire or otherwise exercise control over a crop research facility, a crop from a crop research facility, or other property from a crop research facility with the intent to deprive the owner of the facility, crop, or property or to damage the enterprise conducted at the crop research facility.

(2) A person who does not have the effective consent of the owner and who purposely or knowingly intends to damage the enterprise conducted at a crop research facility may not:

(a) damage or destroy a crop research facility or a crop or property in or on the premises of a crop research facility;

(b) enter a crop research facility that is at the time closed to the public with the intent to commit an act prohibited by this part;

(c) remain concealed in a crop research facility with the intent to commit an act prohibited by this part;

(d) enter a crop research facility and commit or attempt to commit an act prohibited by this part;

(e) enter a crop research facility to take pictures by photograph, video camera, or other means with the intent to commit an unlawful act; or

(f) enter or remain on the premises of a crop research facility if the person:

(i) had notice that the entry was forbidden; or

(ii) received notice to depart but failed to do so.

(3) The provisions of this part do not apply to lawful activities of a government agency or its employees who are carrying out their duties under law or to lawful activities of a financial institution or other secured party.

History: En. Sec. 3, Ch. 441, L. 2001.

80-20-104. Action for damage. (1) A person who has been damaged by reason of a violation of 80-20-103 may bring against the person who caused the damage an action in the district court to recover actual and consequential damages and court costs and reasonable attorney fees.

(2) This part may not be construed to affect any other rights of a person who has been damaged by reason of a violation of this part. The provisions of subsection (1) may not be construed to limit the exercise of any rights arising out of or relating to a violation of 80-20-103.

History: En. Sec. 4, Ch. 441, L. 2001.

TITLE 81
LIVESTOCK

Ch.

1. Department of Livestock.
2. Disease Control.
3. Marks and Brands.
4. Containment of Livestock.
5. Unlawful Transporting or Driving of Livestock.
6. Livestock Protective Associations.
7. Predatory Animal Control.
8. Marketing.
9. Slaughter.
10. Horse Owner Amnesty.

Chapters 11 through 19 reserved.

20. Poultry and Eggs.
21. Dairy Products.
22. Manufactured Dairy Products.
23. Milk Price Control.

Chapters 24 through 28 reserved.

29. Resource and Property Protection.
30. Protection of Farm Animals and Research Facilities.

Title Cross-References

Board of Horseracing, 2-15-1809.

Water Pollution Control Advisory Council, 2-15-2107.

Creation and Composition of Board of Livestock, 2-15-3102.

Rangeland Resources Committee, 2-15-3305.

Fish and Wildlife Commission — one member to be person experienced with livestock, 2-15-3402.

Consideration of livestock districts in city-county consolidation, 7-3-1101.

State policy for resource management, 7-8-2701.

Water district powers — consideration of livestock water supply, 7-13-2218.

Business, agricultural, and livestock services and regulation, Title 7, ch. 21.

County license fees — deposit of percentage in revenue fund for predatory animal control, 7-21-2105.

County funding for extension work, 7-21-3203.

County funding for employment of livestock inspector, 7-21-3211.

Control of feed in emergency, 10-3-505.

Tax provisions relating to livestock, 15-1-101; 15-6-207; 15-7-202; 15-8-201; 15-24-301; 15-24-302; Title 15, ch. 24, part 9; 15-30-2501.

Individual income tax provisions relating to livestock — definitions, 15-30-2501.

Use of federal Taylor Grazing Act funds, 20-9-331.

Experimental facilities, 20-25-222 through 20-25-232.

Study of relationship between forest and pasturage, 20-25-242.

Power of Montana University System Regents to aid development of facilities for livestock breeding, development, and exhibition, 20-25-302.

Preservation of animals — duties of trustees of Montana Historical Society, 22-3-107.

Horseracing, Title 23, ch. 4.

Exemplary damages for inhumane injuries to animals, 27-1-222.

Liability concerning rodeos and similar events, 27-1-733.

Action to recover stock sold for delinquent assessment — Statute of limitations, 27-2-210.

Unborn young of animals as "goods" under Uniform Commercial Code, 30-2-105.

Warranties in sale of animals under Uniform Commercial Code, 30-2-316.

Cattle sales under Uniform Commercial Code, 30-2-401.

Manner of identification of goods — unborn young of animals under Uniform Commercial Code, 30-2-501.

Unlawful to destroy or withhold food for human consumption, 30-14-217.

Casualty insurance — livestock — veterinary services, 33-1-206.

Farm mutual insurers, Title 33, ch. 4.

Farm mutual insurance on livestock, 33-4-501.

Veterinary medicine and technology, Title 37, ch. 18.

Wage provisions pertaining to livestock business, 39-3-404 through 39-3-406.

Unemployment compensation provisions relating to livestock, Title 39, ch. 51, part 2.

Unemployment insurance provisions pertaining to livestock business, 39-51-205.

Failure to close stock gate as criminal mischief, 45-6-101.

Theft of domestic hooved animal — penalty, 45-6-301.

Animal fights prohibited — penalty, 45-8-210.

Cruelty to animals — penalty, 45-8-211.

Unlawful to damage livestock used in mining, 50-73-305.

Motor vehicle provision exceptions, 61-8-101, 61-9-101.

Special fees — livestock hauling vehicles — certain farm vehicles, 61-10-206.

Liability of railroads for killing or injuring stock, Title 69, ch. 14, part 7.
Transportation and protection of livestock by railroads, Title 69, ch. 14, part 7.
Farm laborers' liens, Title 71, ch. 3, part 4.
Agisters' liens, Title 71, ch. 3, part 12.
Lien for rental on frozen food compartments, 71-3-1505.
Pollution defined as affecting livestock, 75-6-102.
Unlawful disposal of dead animals, 75-10-212, 75-10-213.
Effect of designation or acquisition of "natural area", 76-12-111.
Rangeland resources management, Title 76, ch. 14.
Restriction of numbers of grazing livestock as soil conservation, 76-15-101.
Grazing districts, Title 76, ch. 16.
Selection and location of state lands granted by United States — water available for livestock, 77-1-304.
Agricultural and grazing leases, Title 77, ch. 6.
Lease conditions — state grazing lands, 77-6-113.
Formula for fixing annual rental of state grazing lands, 77-6-507.
Mine reclamation — restoration of land and protection of livestock, 82-4-202, 82-4-231, 82-4-233, 82-4-336, 82-4-434.
Powder River Basin — filing claims for existing water rights for livestock, 85-2-222.
No permit required for certain appropriations of water for livestock, 85-2-306.
Standards for fresh water — fit for livestock use, 85-2-504.
Water conservancy districts — consideration of livestock water supply, 85-9-102.
Use of livestock by archers during special archery seasons — rules by Fish and Wildlife Commission, 87-1-304.

CHAPTER 1
DEPARTMENT OF LIVESTOCK

Part 1 — General Provisions

81-1-101. Definitions.
81-1-102. Duties and powers of department — fees based on costs — notice of rules and orders.
81-1-103. Audit of bills — payment of expenses.
81-1-104. Investment of state special revenue account funds — crediting of investment income.
81-1-105. Terminated.
81-1-106. Board meetings — recording required.
81-1-107 through 81-1-109 reserved.
81-1-110. Livestock loss reduction and mitigation accounts.
81-1-111. Livestock loss reduction and mitigation trust fund.
81-1-112. Livestock loss mitigation restricted account.
81-1-113. Livestock loss reduction restricted account.

Part 2 — Inspectors and Detectives

81-1-201. Appointment and powers.
81-1-202. Duties.
81-1-203. Compensation.
81-1-204. Assignment to districts.

Part 3 — Administration of Animal Health Laws

81-1-301. Administrator — appointment and qualifications.
81-1-302. Duties of administrator.
81-1-303. Administrator's expertise to be considered.
81-1-304. Appointment of federal veterinary inspectors.

Part 4 — Rodent Control (Renumbered)

Chapter Cross-References

Special levies for livestock, Art. XII, sec. 1, Mont. Const.
State control of access, ingress, and egress to and through land ceded to United States by persons owning or controlling livestock, 2-1-202, 2-1-209.
Creation of Department of Livestock, 2-15-3101.
Creation and composition of Board of Livestock, 2-15-3102.

Part 1
General Provisions

81-1-101. Definitions. Unless the context requires otherwise, in Title 81, the following definitions apply:

(1) (a) "Bison" means domestic bison or feral bison.

(b) The term does not include:

(i) wild buffalo or wild bison; or

(ii) for the purposes of chapter 9, buffalo.

(2) "Board" means the board of livestock provided for in 2-15-3102, except as provided in Title 81, chapter 23.

(3) "Department" means the department of livestock provided for in Title 2, chapter 15, part 31.

(4) "Domestic bison" means a bison that is not a wild buffalo or wild bison.

(5) "Feral bison" means a domestic bison or progeny of a domestic bison that has escaped or been released from captivity and is running at large and unrestrained on public or private land.

(6) "Wild buffalo" or "wild bison" means a bison that:

(a) has not been reduced to captivity;

(b) has never been subject to the per capita fee under 15-24-921;

(c) has never been owned by a person; and

(d) is not the offspring of a bison that has been subject to the per capita fee under 15-24-921.

History: En. 46-103.1 by Sec. 48, Ch. 310, L. 1974; R.C.M. 1947, 46-103.1; amd. Sec. 1, Ch. 361, L. 2009; amd. Sec. 2, Ch. 403, L. 2011; amd. Sec. 2, Ch. 507, L. 2021.

Cross-References

Board of Livestock — composition, 2-15-3102.

81-1-102. Duties and powers of department — fees based on costs — notice of rules and orders. (1) The department shall exercise general supervision over and, so far as possible, protect the livestock interests of the state from theft and disease and recommend legislation that in the judgment of the department fosters the livestock industry. The department may compel the attendance of witnesses, employ counsel to assist in the prosecution of violations of laws made for the protection of livestock interests, and assist in the prosecution of persons charged with illegal branding or theft of livestock or any other crime under the laws of this state for the protection of stock owners. It may adopt rules governing the recording and use of livestock brands.

(2) Except as provided in 81-8-901, the department shall by rule establish all fees that it is authorized to charge, commensurate with costs.

(3) (a) In addition to the requirements of Title 2, chapter 4, the department shall provide notice of adopted, amended, and repealed administrative rules and orders as provided in subsection (3)(b).

(b) Within 10 working days of the effective date of a rule or order, notice of the rule or order must be published on the department's website and provided to each livestock market and brand office. The department shall provide the notification by electronic means to each conservation district, veterinarian's office, and county extension office in the state and to any person or to the office of any professional or trade organization or member of those entities who has made a request to the department to be informed of the adoption, amendment, or repeal of a rule or order by the department.

(c) The notice provided pursuant to this subsection (3) must include a brief summary of the contents of the rule or order and instructions for accessing a complete copy of the rule or order electronically or by mail.

(4) The department shall perform the duties assigned to the department relating to the administration and regulation of alternative livestock ranches.

(5) The board may hire an executive officer. The executive officer serves at the pleasure of the board. The board may remove an executive officer at any time and appoint a new executive officer.

History: En. Sec. 4, Ch. 51, L. 1917; re-en. Sec. 3256, R.C.M. 1921; re-en. Sec. 3256, R.C.M. 1935; amd. Sec. 49, Ch. 310, L. 1974; amd. Sec. 52, Ch. 359, L. 1977; R.C.M. 1947, 46-104; amd. Sec. 4, Ch. 444, L. 1983; amd. Sec. 1, Ch. 503, L. 1995; amd. Sec. 2, Ch. 574, L. 1999; amd. Sec. 1, Ch. 417, L. 2011; amd. Sec. 1, Ch. 90, L. 2013; amd. Sec. 2, Ch. 187, L. 2015; amd. Sec. 1, Ch. 439, L. 2015.

Cross-References

Subpoenas in administrative proceedings, 2-4-104.

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

Subpoenas generally, Title 26, ch. 2, part 1.

Department of Agriculture to promote livestock shows, 80-1-102.

81-1-103. Audit of bills — payment of expenses. The department shall audit all bills for expenses incurred by it in the discharge of its duties, which shall be paid out of the department's moneys in the state special revenue fund.

History: En. Sec. 5, Ch. 51, L. 1917; re-en. Sec. 3257, R.C.M. 1921; re-en. Sec. 3257, R.C.M. 1935; amd. Sec. 88, Ch. 147, L. 1963; amd. Sec. 50, Ch. 310, L. 1974; R.C.M. 1947, 46-105; amd. Sec. 1, Ch. 277, L. 1983.

81-1-104. Investment of state special revenue account funds — crediting of investment income. The board may direct the board of investments to invest funds from state special revenue accounts of the department pursuant to the provisions of the unified investment program for state funds. The income from such investments shall be credited to the state special revenue account of the department from which the investment is made.

History: En. 46-105.1 by Sec. 1, Ch. 16, L. 1977; R.C.M. 1947, 46-105.1; amd. Sec. 44, Ch. 281, L. 1983.

Cross-References

Powers and duties of Board of Investments — unified investment program, 17-6-201.

81-1-105. Terminated. Sec. 6, Ch. 234, L. 1991.

History: En. Sec. 4, Ch. 234, L. 1991.

81-1-106. Board meetings — recording required. (1) The board shall audio record and may video record all board meetings, including meetings held by conference call or other electronic means.

(2) The board shall make the audio or video recording available online in real time when possible and shall make meeting recordings publicly available on the board's website within 2 business days of the meeting date.

History: En. Sec. 1, Ch. 242, L. 2015.

81-1-107 through 81-1-109 reserved.

81-1-110. Livestock loss reduction and mitigation accounts. (1) There are livestock loss reduction and mitigation special revenue accounts administered by the department within the state special revenue fund and the federal special revenue fund established in 17-2-102.

(2) (a) All state proceeds allocated or budgeted for the purposes of 2-15-3110 through 2-15-3114, 81-1-110, and 81-1-111, except those transferred to the account provided for in 81-1-112 or 81-1-113 or appropriated to the department of livestock, must be deposited in the state special revenue account provided for in subsection (1) of this section.

(b) Money received by the state in the form of gifts, grants, reimbursements, or allocations from any source intended to be used for the purposes of 2-15-3111 through 2-15-3113 must be deposited in the appropriate account provided for in subsection (1) of this section.

(c) All federal funds awarded to the state for compensation for wolf, mountain lion, black bear, or grizzly bear depredations on livestock must be deposited in the federal special revenue account provided for in subsection (1) for the purposes of 2-15-3112.

(3) The livestock loss board may spend funds in the accounts only to carry out the provisions of 2-15-3111 through 2-15-3113.

History: En. Sec. 5, Ch. 261, L. 2007; amd. Sec. 5, Ch. 229, L. 2011; amd. Sec. 8, Ch. 339, L. 2011; amd. Sec. 5, Ch. 172, L. 2013; amd. Sec. 4, Ch. 349, L. 2015; amd. Sec. 5, Ch. 76, L. 2017; amd. Sec. 5, Ch. 649, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 5, Ch. 649, L. 2025. Amendment effective July 1, 2025.

81-1-111. Livestock loss reduction and mitigation trust fund. (1) The legislature shall provide for a fund, to be known as the livestock loss reduction and mitigation trust fund, to be funded with gifts, grants, reimbursements, appropriations, or allocations from any source.

(2) The principal of the livestock loss reduction and mitigation trust fund shall forever remain inviolate in an amount of $5 million unless appropriated by a vote of three-fourths of the members of each house of the legislature.

(3) The interest and income generated from the livestock loss reduction and mitigation trust fund must be deposited in the livestock loss reduction and mitigation state special revenue account provided for in 81-1-110. The interest and income may be appropriated by a majority vote of each house of the legislature and may be used only to fund the livestock loss reduction program and the livestock loss mitigation program as provided in 2-15-3111 and 2-15-3112.

(4) (a) Until the principal of the fund reaches $5 million, at the end of each biennium, any amount of interest and income from the trust fund that is not used for the livestock loss reduction program or the livestock loss mitigation program must be used to reimburse the state general fund up to $120,000. Any remaining interest and income must be deposited in the trust fund as principal.

(b) After the principal of the trust fund reaches $5 million, at the end of each biennium, any amount of interest and income that is not used for the livestock loss reduction program or the livestock loss mitigation program must be deposited in the general fund.

History: En. Sec. 6, Ch. 261, L. 2007.

81-1-112. *(Temporary)* **Livestock loss mitigation restricted account.** (1) There is an account in the state special revenue fund established by 17-2-102 to be known as the livestock loss mitigation restricted special revenue account. The account is administered by the department.

(2) Each fiscal year, the amount provided in 15-1-122(3) is transferred to the account from the state general fund and is restricted to the purpose of making payments to livestock producers for confirmed and probable livestock losses pursuant to 2-15-3112(2). Money in the account may not be expended for administrative expenses.

(3) The livestock loss mitigation restricted special revenue account is statutorily appropriated, as provided in 17-7-502, to the department for the purpose of making payments to livestock producers as provided in subsection (2) of this section.

(4) On June 30 of each year, any unencumbered funds in the account in excess of $300,000 must be transferred to the livestock loss reduction restricted special revenue account established in 81-1-113. *(Terminates June 30, 2029—secs. 1, 2, Ch. 20, L. 2023.)*

81-1-112. *(Effective July 1, 2029)* **Livestock loss mitigation restricted account.** (1) There is an account in the state special revenue fund established by 17-2-102 to be known as the livestock loss mitigation restricted special revenue account. The account is administered by the department.

(2) Each fiscal year, the amount provided in 15-1-122(3) is transferred to the account from the state general fund and is restricted to the purpose of making payments to livestock producers for confirmed and probable livestock losses pursuant to 2-15-3112(2). Money in the account may not be expended for administrative expenses.

(3) On June 30 of each year, any unencumbered funds in the account in excess of $300,000 must be transferred to the livestock loss reduction restricted special revenue account established in 81-1-113.

History: En. Sec. 1, Ch. 339, L. 2011; amd. Sec. 5, Ch. 349, L. 2015; amd. Sec. 8, Ch. 343, L. 2019.

81-1-113. *(Temporary)* **Livestock loss reduction restricted account.** (1) There is an account in the state special revenue fund established by 17-2-102 to be known as the livestock loss reduction restricted special revenue account. The account is administered by the department.

(2) Except as provided in subsection (6), the money transferred to the account is restricted to the purposes of reducing predation on livestock by wolves and grizzly bears and reducing expenses incurred by livestock owners, including but not limited to veterinary bills, caused by wolves and grizzly bears.

(3) Money received by the state in the form of gifts, grants, reimbursements, or allocations from any source intended to be used for either or both of the purposes of subsection (2) must be deposited in the account provided for in subsection (1).

(4) Money in the account is statutorily appropriated, as provided in 17-7-502, to the department for carrying out the purposes of this section.

(5) Except as provided in subsection (6), to reduce predation of livestock, the livestock loss board:

(a) shall use at least half of the money transferred into the account pursuant to subsection (2) on nonlethal, preventative measures; and

(b) may use half of the money transferred into the account pursuant to subsection (2) to contract with the United States department of agriculture wildlife services.

(6) Up to 10% of the money in the account may be used for administrative expenses. *(Terminates June 30, 2029—sec. 3, Ch. 20, L. 2023.)*

81-1-113. *(Effective July 1, 2029)* **Livestock loss reduction restricted account.** (1) There is an account in the state special revenue fund established by 17-2-102 to be known as the livestock loss reduction restricted special revenue account. The account is administered by the department.

(2) Except as provided in subsection (5), the money transferred to the account is restricted to the purposes of reducing predation on livestock by wolves and grizzly bears and reducing expenses incurred by livestock owners, including but not limited to veterinary bills, caused by wolves and grizzly bears.

(3) Money received by the state in the form of gifts, grants, reimbursements, or allocations from any source intended to be used for either or both of the purposes of subsection (2) must be deposited in the account provided for in subsection (1).

(4) Except as provided in subsection (5), to reduce predation of livestock, the livestock loss board:

(a) shall use at least half of the money transferred into the account pursuant to subsection (2) on nonlethal, preventative measures; and

(b) may use half of the money transferred into the account pursuant to subsection (2) to contract with the United States department of agriculture wildlife services.

(5) Up to 10% of the money in the account may be used for administrative expenses.

History: En. Sec. 1, Ch. 349, L. 2015; amd. Sec. 4, Ch. 284, L. 2017.

Part 2
Inspectors and Detectives

Part Cross-References

Special levies on commodities for livestock and commodity inspection, Art. XII, sec. 1, Mont. Const.

81-1-201. Appointment and powers. The department may appoint stock inspectors and detectives necessary for the protection of the livestock interests of this state. The department shall designate which inspectors and detectives are considered law enforcement officers, and those designated shall take the official oath required by law and shall have similar powers and authority to those conferred by law on deputy sheriffs. However, they are not entitled to the fees or emoluments awarded by law to deputy sheriffs. The board shall devise an examination for the qualification of stock inspectors and detectives designated as law enforcement officers and may appoint and employ only persons who successfully pass such examination. The board shall promulgate administrative rules for the taking of this examination and define a passing grade.

History: En. Sec. 2970, Pol. C. 1895; re-en. Sec. 1796, Rev. C. 1907; amd. Sec. 1, Ch. 170, L. 1921; re-en. Sec. 3309, R.C.M. 1921; re-en. Sec. 3309, R.C.M. 1935; amd. Sec. 1, Ch. 17, L. 1974; amd. Sec. 96, Ch. 310, L. 1974; R.C.M. 1947, 46-701; amd. Sec. 5, Ch. 444, L. 1983.

Cross-References

Official oath, 2-16-211.

Powers and authority of Sheriffs, 7-32-2121.

Duties of state stock inspectors and deputy stock inspectors, 81-3-203.

81-1-202. Duties. The stock inspectors and detectives shall arrest all persons who in their presence violate the stock laws of this state. Each stock inspector and detective, on information that a person has committed an offense against the laws of this state by engaging in illegal branding or theft of stock or an offense against the laws of this state for the protection of the rights and interests of stock owners, shall make the necessary affidavit for the arrest and examination of the person and on a warrant issued for the person immediately arrest the person and bring the person before the proper officer and notify the department of the person's acts.

History: En. Sec. 2972, Pol. C. 1895; re-en. Sec. 1798, Rev. C. 1907; re-en. Sec. 3311, R.C.M. 1921; re-en. Sec. 3311, R.C.M. 1935; amd. Sec. 97, Ch. 310, L. 1974; amd. Sec. 53, Ch. 359, L. 1977; R.C.M. 1947, 46-703; amd. Sec. 2623, Ch. 56, L. 2009.

Cross-References

Employment, compensation, and confidentiality of stock inspector, 7-21-3211 and 7-21-3212.

Authority of highway patrol officers to stop vehicles and determine rightful possession of livestock in vehicles, 44-1-1004.

Illegal branding or altering or obscuring of brand, 45-6-327.

Arrest, Title 46, ch. 6.

81-1-203. Compensation. The stock inspectors and detectives are under the exclusive control and direction of the department. They must be paid for their services in the amount which the department determines.

History: En. Sec. 2973, Pol. C. 1895; re-en. Sec. 1799, Rev. C. 1907; re-en. Sec. 3312, R.C.M. 1921; re-en. Sec. 3312, R.C.M. 1935; amd. Sec. 91, Ch. 147, L. 1963; amd. Sec. 98, Ch. 310, L. 1974; R.C.M. 1947, 46-704.

81-1-204. Assignment to districts. The stock inspectors and detectives are district officers, and the department must designate the district in which the inspectors and detectives serve, and the district must be designated in their commissions.

History: En. Sec. 2991, Pol. C. 1895; re-en. Sec. 1800, Rev. C. 1907; re-en. Sec. 3313, R.C.M. 1921; re-en. Sec. 3313, R.C.M. 1935; amd. Sec. 99, Ch. 310, L. 1974; R.C.M. 1947, 46-705.

Part 3
Administration of Animal Health Laws

Part Cross-References

Special levies on commodities for livestock and commodity inspection, Art. XII, sec. 1, Mont. Const.

81-1-301. Administrator — appointment and qualifications. (1) The board shall appoint a person to be directly responsible to it for the administration of the laws relating to animal health.

(2) The person must have a doctor of veterinary medicine degree from an accredited college or school and must be licensed to practice veterinary medicine in this state.

History: En. Sec. 3, Ch. 262, L. 1921; re-en. Sec. 3262, R.C.M. 1921; re-en. Sec. 3262, R.C.M. 1935; amd. Sec. 52, Ch. 310, L. 1974; R.C.M. 1947, 46-203; amd. Sec. 2624, Ch. 56, L. 2009.

Cross-References

License provisions governing practice of veterinary medicine, Title 37, ch. 18, part 3.

81-1-302. Duties of administrator. The administrator, subject to the rules of the board, may act for and perform the duties imposed by law on the board when the board is not in session, but any order or regulation promulgated by the administrator is subject to review, modification, or annulment by the board.

History: En. Sec. 4, Ch. 262, L. 1921; re-en. Sec. 3263, R.C.M. 1921; re-en. Sec. 3263, R.C.M. 1935; amd. Sec. 53, Ch. 310, L. 1974; R.C.M. 1947, 46-204; amd. Sec. 2625, Ch. 56, L. 2009.

81-1-303. Administrator's expertise to be considered. In any action taken by the board in 81-2-102 and 81-20-101, the board shall ask for and consider the expertise and judgment of the administrator of the laws relating to animal health.

History: En. 46-209.1 by Sec. 58, Ch. 310, L. 1974; R.C.M. 1947, 46-209.1.

81-1-304. Appointment of federal veterinary inspectors. With the approval of either the federal veterinarian in charge in this state or the United States department of agriculture, the department of livestock may appoint federal veterinarians or federal lay inspectors stationed in this state, as deputies or agents for the department. All federal officers so appointed as deputies or agents of the department possess the powers and duties of regular deputies or agents of the department, but they shall act without compensation and hold office only at the pleasure of the department.

History: En. Sec. 6, Ch. 262, L. 1921; re-en. Sec. 3265, R.C.M. 1921; re-en. Sec. 3265, R.C.M. 1935; amd. Sec. 54, Ch. 310, L. 1974; R.C.M. 1947, 46-206.

Cross-References

Powers and authority of Sheriffs, 7-32-2121, 81-3-203.

Part 4
Rodent Control
(Renumbered)

81-1-401. Renumbered 80-7-1101. Sec. 4, Ch. 65, L. 1983.

81-1-402. Renumbered 80-7-1102. Sec. 4, Ch. 65, L. 1983.

81-1-403. Renumbered 80-7-1103. Sec. 4, Ch. 65, L. 1983.

CHAPTER 2
DISEASE CONTROL

Part 1 — General Administration

81-2-101. Authority of department agents.
81-2-102. Powers of department.
81-2-103. Adoption of rules.
81-2-104. Rules — agreement with federal government.
81-2-105. Authority of municipal corporations.
81-2-106. Cooperation by public officers.
81-2-107. Duty to report contagious diseases.
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81-2-509. Repealed.
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81-2-706. Consignment requirements.
81-2-707. Department rulemaking power.
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Part 1
General Administration

81-2-101. Authority of department agents. In the performance of official duties, an agent or officer of the department may enter on or in a lot, yard, land, building, room, premises, enclosure, car, wagon, boat, or other place or vehicle used for the treatment, storage, manufacture, display, or transportation of animals, meat, or dairy products intended for sale or disposal as food. The agent or officer may enter anywhere where livestock may be found that are affected with or that have been exposed to or that the officer has reason to believe are either affected with or have been exposed to an infectious, contagious, communicable, or dangerous disease or disease-carrying insects.

History: En. Sec. 7, Ch. 262, L. 1921; re-en. Sec. 3266, R.C.M. 1921; re-en. Sec. 3266, R.C.M. 1935; amd. Sec. 55, Ch. 310, L. 1974; R.C.M. 1947, 46-207; amd. Sec. 2626, Ch. 56, L. 2009.

Cross-References

Search and seizure, Art. II, sec. 11, Mont. Const.; Title 46, ch. 5.

81-2-102. Powers of department. (1) The department may:

(a) supervise the sanitary conditions of livestock in this state, under the provisions of the constitution and statutes of this state and the rules adopted by the department. The department may quarantine a lot, yard, land, building, room, premises, enclosure, or other place or section in this state that is or may be used or occupied by livestock and that in the judgment of the department is infected or contaminated with an infectious, contagious, communicable, or dangerous disease or disease-carrying medium by which the disease may be communicated. The department may quarantine livestock in this state when the livestock is affected with or has been exposed to disease or disease-carrying medium. The department may prescribe treatments and enforce sanitary rules that are necessary and proper to circumscribe, extirpate, control, or prevent the disease.

(b) foster, promote, and protect the livestock industry in this state by the investigation of diseases and other subjects related to ways and means of prevention, extirpation, and control of diseases or to the care of livestock and its products and to this end may establish and maintain a laboratory, may make or cause to be made biologic products, curatives, and preventative agents, and may perform any other acts and things as may be necessary or proper in the fostering, promotion, or protection of the livestock industry in this state;

(c) impose and collect fees that the department considers appropriate for the tests and services performed by it at the laboratory or elsewhere and for biologic products, curatives, and preventative agents made or caused to be made by the department. In fixing these fees, the department shall take into consideration the costs, both direct and indirect, of the tests, services, products, curatives, and agents. All fees must be deposited in the enterprise fund account established in 81-2-116 for the use of the animal laboratory functions of the department.

(d) subject to subsection (2), adopt rules and orders that it considers necessary or proper to prevent the introduction or spreading of infectious, contagious, communicable, or dangerous diseases affecting livestock and alternative livestock in this state;

(e) (i) adopt rules and orders that it considers necessary or proper for the inspection, testing, and quarantine of all livestock and alternative livestock imported into this state; and

(ii) adopt rules and orders that it considers necessary or proper governing inspections and tests of livestock and alternative livestock intended for importation into this state to prevent the introduction or spreading of infectious, contagious, communicable, or dangerous diseases affecting livestock and alternative livestock;

(f) adopt rules and orders that it considers necessary or proper for the supervision, inspection, and control of the standards and sanitary conditions of slaughterhouses, meat depots, meat and meat food products, dairies, milk depots, milk and its byproducts, barns, dairy cows, factories, and other places and premises where meat or meat foods, milk or its products, or any byproducts thereof intended for sale or consumption as food are produced, kept, handled, or stored. An authorized representative of the department may take samples of a product so

produced, kept, handled, or stored for analysis or testing by the department. The records of the samples and their analysis and test, when identified as to the sample by the oath of the officer taking it and verified as to the analysis or test by the oath of the chemist or bacteriologist making it, are prima facie evidence of the facts set forth in them when offered in evidence in a prosecution or action at law or in equity for violation of 81-9-201, 81-20-101, 81-21-102, 81-21-103, part 1, 2, or 3 of this chapter, or a rule or order of the board adopted thereunder. These standards, insofar as they relate to dairies or milk and its byproducts, may not include standards of weight or measurement. A producer as defined in 50-49-202 selling homemade food or a homemade food product pursuant to Title 50, chapter 49, part 2, is not subject to the rules and orders adopted under this subsection (1)(f) as those relate to the licensure, permitting, certification, packaging, labeling, or inspection that pertains to the preparation, serving, use, consumption, delivery, or storage of homemade food or a homemade food product.

(g) adopt rules and orders that seem necessary or proper for the supervision and control of manufactured and refined foods for livestock and the manufacture, importation, sale, and method of using a biologic remedy or curative agent for the treatment of diseases of livestock. However, as far as practicable, the standards approved by the United States department of agriculture must be adopted.

(h) slaughter or cause to be slaughtered any livestock in this state known to be affected with or that has been exposed to an infectious, contagious, communicable, or dangerous disease, when the slaughter is necessary for the protection of other livestock, and destroy or cause to be destroyed all barns, stables, sheds, outbuildings, fixtures, furniture, or personal property infected with any infectious, contagious, communicable, or dangerous disease when they cannot be thoroughly cleaned and disinfected and the destruction is necessary to prevent the spreading of the disease;

(i) indemnify the owner of any property destroyed by order of the department or pursuant to any rules adopted by the department under 81-20-101, 81-21-102, 81-21-103, or part 1, 2, or 3 of this chapter;

(j) require persons, firms, and corporations engaged in the production or handling of meat, meat food products, dairy products, or any byproducts thereof to furnish statistics of the quantity and cost of the food and food products produced or handled and the name and address of persons supplying them any of the products.

(2) (a) As used in subsection (1)(d), "order" means a command, direction, or instruction issued by the department, board, or board's administrator in circumstances that clearly constitute an existing imminent peril to the public health, safety, or welfare or to animal health or welfare.

(b) An order under subsection (1)(d) may last no more than 5 years and may be altered or rescinded as necessary to address the circumstances set out in subsection (1)(d). An order may not be used to create a permanent program.

(c) As used in subsection (2)(b), "program" means a legislatively or administratively created function, project, or duty of an agency.

(3) When in the exercise of its powers or the discharge of its duties it becomes necessary for employees of the department to investigate facts and conditions, they may administer oaths, take affidavits, and compel the attendance and testimony of witnesses.

History: (1)En. Sec. 8, Ch. 262, L. 1921; re-en. Sec. 3267, R.C.M. 1921; re-en. Sec. 3267, R.C.M. 1935; amd. Sec. 56, Ch. 310, L. 1974; amd. Sec. 1, Ch. 139, L. 1975; amd. Sec. 9, Ch. 12, L. 1977; Sec. 46-208, R.C.M. 1947; (2) En. Sec. 31, Ch. 262, L. 1921; re-en. Sec. 3290, R.C.M. 1921; re-en. Sec. 3290, R.C.M. 1935; amd. Sec. 82, Ch. 310, L. 1974; Sec. 46-240, R.C.M. 1947; R.C.M. 1947, 46-208, 46-240; amd. Sec. 1, Ch. 28, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 18, Ch. 577, L. 1987; amd. Sec. 3, Ch. 574, L. 1999; amd. Sec. 1, Ch. 5, L. 2011; amd. Sec. 12, Ch. 351, L. 2017; amd. Sec. 1, Ch. 87, L. 2019; amd. Sec. 10, Ch. 320, L. 2021.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.
Veterinary medicine, Title 37, ch. 18.
Montana Food, Drug, and Cosmetic Act, Title 50, ch. 31, parts 1 and 2.
Related agricultural rules, 80-9-103.
Consideration of administrator's expertise, 81-1-303.
Slaughterhouse license — fees and renewals, 81-9-201.
Injunctive remedies to prevent violation of rules, 81-21-104.
Penalty for violation of rule or order, 81-21-105.

81-2-103. Adoption of rules. The department shall adopt and enforce rules for the inspection and tuberculin testing of dairy cattle or other animals and for the inspection, testing, treatment, or disposition of livestock or other animals affected with or which may have been exposed to infectious, contagious, communicable, or dangerous disease and for the quarantines provided for in this chapter or 81-20-101.

History: En. Sec. 9, Ch. 262, L. 1921; re-en. Sec. 3268, R.C.M. 1921; re-en. Sec. 3268, R.C.M. 1935; amd. Sec. 59, Ch. 310, L. 1974; amd. Sec. 10, Ch. 12, L. 1977; R.C.M. 1947, 46-211; amd. Sec. 1, Ch. 110, L. 1981.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

81-2-104. Rules — agreement with federal government. When the department determines that it is necessary to eradicate or control an infectious, contagious, communicable, or dangerous disease of livestock in this state, in cooperation with the United States department of agriculture or other federal agency, and to appraise and destroy animals affected with or which have been exposed to a disease or to destroy property in order to remove the infection and complete the cleaning and disinfection of the premises or to do any act or incur any other expense reasonably necessary in suppressing this disease, the board may accept and adopt on behalf of the state the rules adopted by the United States department of agriculture or other federal agency under authority of an act of congress or the portion considered necessary, suitable, or applicable. The department may adopt other rules necessary or desirable for this purpose and cooperate with the United States department of agriculture or other federal agency in the enforcement of the rules accepted and adopted.

History: En. Sec. 2, Ch. 177, L. 1937; amd. Sec. 71, Ch. 310, L. 1974; R.C.M. 1947, 46-227.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

81-2-105. Authority of municipal corporations. (1) Nothing in this title prevents the governing authority of a municipal corporation from enacting or enforcing ordinances for the inspection of slaughterhouses, meat depots, meat markets, meat food products, creameries, butter or cheese factories, dairies, or dairy products located, sold, or offered for sale in the limits of the municipal corporation. An ordinance may not be enforced in conflict with the powers of this title delegated to the department and its officers or agents.

(2) The governing activity authority of a municipal corporation may not enact or enforce ordinances pursuant to this section for producers as defined in 50-49-202 selling homemade food or a homemade food product pursuant to Title 50, chapter 49, part 2.

History: En. Sec. 11, Ch. 262, L. 1921; re-en. Sec. 3270, R.C.M. 1921; re-en. Sec. 3270, R.C.M. 1935; amd. Sec. 63, Ch. 310, L. 1974; amd. Sec. 12, Ch. 12, L. 1977; R.C.M. 1947, 46-217; amd. Sec. 1, Ch. 14, L. 1979; amd. Sec. 11, Ch. 320, L. 2021.

Cross-References

Opening of public market, 7-21-3303.

81-2-106. Cooperation by public officers. The department of public health and human services and local boards of health of a county, city, or town shall cooperate with and assist the department in matters that relate to the execution of its sanitary powers regarding livestock and their food products in the manner prescribed by the department, either by general rule or direct order.

History: En. Sec. 25, Ch. 262, L. 1921; re-en. Sec. 3284, R.C.M. 1921; re-en. Sec. 3284, R.C.M. 1935; amd. Sec. 78, Ch. 310, L. 1974; amd. Sec. 21, Ch. 12, L. 1977; R.C.M. 1947, 46-234; amd. Sec. 348, Ch. 418, L. 1995; amd. Sec. 548, Ch. 546, L. 1995.

Cross-References

Montana Food, Drug, and Cosmetic Act, Title 50, ch. 31.
Food establishments, Title 50, ch. 50, 57.

81-2-107. Duty to report contagious diseases. A person, including the owner or custodian, who has reason to suspect the existence of a dangerous, infectious, contagious, or communicable disease in livestock or the presence of animals exposed to the disease in this state shall immediately give notice to the department.

History: En. Sec. 27, Ch. 262, L. 1921; re-en. Sec. 3286, R.C.M. 1921; re-en. Sec. 3286, R.C.M. 1935; amd. Sec. 80, Ch. 310, L. 1974; R.C.M. 1947, 46-236.

81-2-108. Diseased animals not to run at large — burial of carcasses. It shall be unlawful for any owner, agent, or person in charge of any domestic animal or animals that are known to be suffering from or exposed to a dangerous, infectious, contagious, or communicable disease to permit such animal or animals to run at large on the public range or public highway. It shall be the duty of the owner or agent or person in charge of animals which died or they have reason to suspect did die from an infectious, contagious, communicable, or dangerous disease to properly bury or burn the same.

History: En. Sec. 28, Ch. 262, L. 1921; re-en. Sec. 3287, R.C.M. 1921; re-en. Sec. 3287, R.C.M. 1935; R.C.M. 1947, 46-237.

Cross-References

Rabies control, Title 50, ch. 23.

81-2-109. Expenses, how paid — lien and foreclosure. (1) If there is no violation of law or department rule, the expense of inspecting, testing, supervision of quarantine, supervision of dipping, supervision of disinfection, and supervision of other treatment of diseased or exposed livestock by the department and the sanitary inspection of dairies, packinghouses, meat depots, slaughterhouses, milk depots, and other premises must be paid for by the department. However, the owner of the livestock or property is liable for all expenses, except the salary of the designated supervising officer representing the department, when the owner, agent, or person in charge of the livestock or property has violated the law or rules of the department.

(2) The expenses for which an owner, agent, or person in charge is liable under subsection (1) include:

(a) all investigatory expenses, including travel, meals, and lodging of all investigating officers representing the department; and

(b) all other expenses, extraordinary or otherwise, that in the judgment of the department are reasonably necessary to ensure that there has been or will be compliance with all applicable laws and rules.

(3) The department, at the conclusion of an investigation of a violation, shall serve notice on the violator, informing the violator of all expenses for which the violator is liable. The notice must state that if a response is not sent within 30 days of receipt of the notice, the notice is prima facie evidence of the reasonableness of the expenses and of the violator's liability for them.

(4) A showing by the department that a response to the notice required by subsection (3) was not received within 30 days of receipt of the notice is prima facie evidence of the reasonableness of the expenses stated and of the liability of the violator for those expenses.

(5) These expenses are a lien on the livestock or other property, and the department may retain possession of the livestock until the charges and expenses are paid. The lien is not dependent on possession and may be foreclosed in the name of the agent of the department by sale at public auction of the stock or as many as may be necessary to pay the sum of the costs, after 10 days' notice by posting in three public places in the county. The lien may also be foreclosed by an action in a court of competent jurisdiction against the owner of the livestock to recover the amount of charges and expenses.

History: En. Sec. 21, Ch. 262, L. 1921; re-en. Sec. 3280, R.C.M. 1921; re-en. Sec. 3280, R.C.M. 1935; amd. Sec. 74, Ch. 310, L. 1974; amd. Sec. 18, Ch. 12, L. 1977; R.C.M. 1947, 46-230; amd. Sec. 2, Ch. 28, L. 1979; amd. Sec. 1, Ch. 353, L. 1983; amd. Sec. 2627, Ch. 56, L. 2009.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

81-2-110. Expense of cleaning and disinfecting carriers' facilities. The expense of cleaning and disinfecting cars, yards, or other transportation facilities of a common carrier, when required by the department, is a charge against the common carrier. Also, the expense of supervising the cleaning and disinfecting of cars for transportation of livestock, when required at a point other than disinfection points agreed on between the department and the carrier, is a charge against the common carrier.

History: En. Sec. 22, Ch. 262, L. 1921; re-en. Sec. 3281, R.C.M. 1921; re-en. Sec. 3281, R.C.M. 1935; amd. Sec. 75, Ch. 310, L. 1974; R.C.M. 1947, 46-231.

81-2-111. Injunctive remedies. The department may apply for and the court may grant a temporary or permanent injunction restraining any person from violating the provisions of

parts 1 through 3 of this chapter or rules adopted thereunder, notwithstanding the existence of other remedies at law. When the application of other remedies has been insufficient to compel action to control, extirpate, or prevent the spread of disease or upon a showing that an animal disease emergency exists and that other remedies probably would be insufficient to compel action to control the emergency, the department may apply for and the court may grant mandatory injunctive relief.

History: En. 46-210.1 by Sec. 1, Ch. 190, L. 1977; R.C.M. 1947, 46-210.1.

Cross-References

Injunctions, Title 27, ch. 19.

Penalty for misdemeanor, 46-18-212.

81-2-112. Prohibition by governor on importation of animals from localities where disease exists — penalty. (1) Whenever the governor has good reason to believe that any disease dangerous or inimical to the livestock or poultry industry or dangerous to dogs or other animals has become epidemic in certain localities in any other state or territory, the District of Columbia, or any other country, the governor shall issue a proclamation designating the localities and prohibiting the importation from those localities into this state, except under restrictions that the governor may consider proper, of any livestock, poultry, dogs, or other animals or articles or commodities likely to convey the disease or diseases.

(2) A person who, after the publication of the proclamation, knowingly receives any livestock, dog, fowl, or other animal or article or commodity designated in the proclamation as likely to convey disease from any of the prohibited districts and transports or conveys the animal, article, or commodity within the limits of this state is punishable by imprisonment in the county jail for not less than 60 days or more than 8 months or a fine of not less than $300 or more than $5,000, or both, and is further liable for any and all damages and loss that may be sustained by any person or persons by reason of the disobedience of the proclamation.

History: (1)En. Sec. 1, Ch. 31, L. 1925; re-en. Sec. 3295.1, R.C.M. 1935; Sec. 46-245, R.C.M. 1947; (2)En. Sec. 2, Ch. 31, L. 1925; re-en. Sec. 3295.2, R.C.M. 1935; Sec. 46-246, R.C.M. 1947; R.C.M. 1947, 46-245, 46-246; amd. Sec. 2628, Ch. 56, L. 2009.

81-2-113. Penalty. Any person, persons, firm, or corporation violating any provision of parts 1 through 3 of this chapter, or the rule or order promulgated by authority of same shall be guilty of a misdemeanor. Violations shall be tried without undue delay in any court of competent jurisdiction.

History: En. Sec. 29, Ch. 262, L. 1921; re-en. Sec. 3288, R.C.M. 1921; re-en. Sec. 3288, R.C.M. 1935; amd. Sec. 23, Ch. 12, L. 1977; R.C.M. 1947, 46-238.

Cross-References

Penalty for misdemeanor, 46-18-212.

81-2-114. Civil liability. A person, firm, or corporation which violates parts 1 through 3 of this chapter or rules or orders of the department is liable for damages sustained by a person because of the violation. The damages may be recovered by the person in a civil action in a court of competent jurisdiction.

History: En. Sec. 30, Ch. 262, L. 1921; re-en. Sec. 3289, R.C.M. 1921; re-en. Sec. 3289, R.C.M. 1935; amd. Sec. 81, Ch. 310, L. 1974; amd. Sec. 24, Ch. 12, L. 1977; R.C.M. 1947, 46-239.

81-2-115. Confidentiality of information collected — exceptions. (1) Except as provided in subsections (2) through (4), all information regarding the testing of any livestock that is owned by or in the possession or custody of a livestock producer, livestock dealer as defined in 81-8-213, or livestock market as defined in 81-8-213 that is collected by the department:

(a) must be held confidential by the department and its employees;

(b) is not a public record or public information as defined in 2-6-1002 and is exempt from disclosure; and

(c) is not subject to discovery or introduction into evidence in any civil action.

(2) For the purposes of this section, "livestock" has the meaning provided in 81-2-702.

(3) The administrator appointed pursuant to 81-1-301 may disclose information collected by the department from individual livestock producers, livestock dealers, or livestock markets for the purposes of the department's animal health programs whenever in the administrator's judgment the disclosure will assist in the implementation of the animal health programs. The administrator may disclose the information to another governmental entity pursuant to the

conditions described in subsection (4) or if the governmental entity confirms in writing that the entity will maintain the confidentiality of the information.

(4) Animal disease diagnostic tests that identify the owner of the animal tested may not be disclosed unless:

(a) the administrator determines that disclosure is necessary to prevent the spread of an animal disease or to protect the public health;

(b) the owner gives written permission to disclose the information;

(c) the information is disclosed in actions or administrative proceedings commenced under the provisions of Title 81, chapter 2, 4, 5, 6, 8, 9, or 30;

(d) disclosure is required by subpoena or court order; or

(e) the information is disclosed to a law enforcement agency in connection with the investigation or prosecution of criminal offenses.

(5) Upon release by the administrator or the board of any information to any other governmental entity or to any person, the administrator shall:

(a) notify the person to whom the information refers or pertains that the release has been made and the name of the governmental entity or person to whom the information was released; and

(b) provide to the person to whom the information refers a copy or summary of the information contained in the release.

History: En. Sec. 1, Ch. 16, L. 2011; amd. Sec. 58, Ch. 348, L. 2015.

81-2-116. Animal health account — enterprise fund account for laboratory services. (1) There is an account in the state special revenue fund established by 17-2-102 to be known as the animal health account. All fees collected by the department related to animal health, except those received pursuant to 81-2-102(1)(c), must be deposited in the account to be used for animal health functions of the department.

(2) (a) There is an account of the enterprise fund type, as defined in 17-2-102(2)(a), to the credit of the department for the use of the laboratory functions of the department.

(b) Gross revenue from the collection of fees for services rendered pursuant to 81-2-102(1)(c) must be deposited in the account.

(c) All interest and earnings on money deposited in the account must be credited to the account and used for the laboratory functions of the department.

History: En. Sec. 4, Ch. 351, L. 2017.

81-2-117 through 81-2-119 reserved.

81-2-120. Management of wild buffalo or wild bison for disease control. (1) Whenever a publicly owned wild buffalo or wild bison from a herd that is infected with a dangerous disease enters the state of Montana on public or private land and the disease may spread to persons or livestock or whenever the presence of wild buffalo or wild bison may jeopardize Montana's compliance with other state-administered or federally administered livestock disease control programs, the department may, under a plan approved by the governor, use any feasible method in taking one or more of the following actions:

(a) The live wild buffalo or wild bison may be captured, tested, quarantined, and vaccinated. Wild buffalo or wild bison that are certified by the state veterinarian as brucellosis-free may be:

(i) sold to help defray the costs that the department incurs in building, maintaining, and operating necessary facilities related to the capture, testing, quarantine, or vaccination of the wild buffalo or wild bison. Proceeds from the sale of live, brucellosis-free, vaccinated wild buffalo or wild bison must be deposited in the state special revenue fund to the credit of the department. Any revenue generated in excess of the costs referred to in this subsection (1)(a)(i) must be deposited in the state special revenue fund provided for in 87-1-513(2).

(ii) transferred to a qualified tribal entity that participates in the disease control program provided for in this subsection (1)(a). Acquisition of wild buffalo or wild bison by a qualified tribal entity must be done in a manner that does not jeopardize compliance with a state-administered or federally administered livestock disease control program. The department may adopt rules consistent with this section governing tribal participation in the program or enter into cooperative agreements with tribal organizations for the purposes of carrying out the disease control program.

(b) The live wild buffalo or wild bison may be physically removed by the safest and most expeditious means from within the state boundaries, including but not limited to hazing and aversion tactics or capture, transportation, quarantine, or delivery to a department-approved slaughterhouse.

(c) The live wild buffalo or wild bison may be destroyed by the use of firearms. If a firearm cannot be used for reasons of public safety or regard for public or private property, the animal may be relocated to a place that is free from public or private hazards and destroyed by firearms or by a humane means of euthanasia.

(d) The live wild buffalo or wild bison may be taken through limited public hunts pursuant to 87-2-730 when authorized by the state veterinarian and the department.

(2) Whenever the department is responsible for the death of a wild buffalo or wild bison, either purposefully or unintentionally, the carcass of the animal must be disposed of by the most economical means, including but not limited to burying, incineration, rendering, or field dressing for donation or delivery to a department-approved slaughterhouse or slaughter destination.

(3) In disposing of the carcass, the department:

(a) as first priority, may donate a wild buffalo or wild bison carcass to a charity or to an Indian tribal organization; or

(b) may sell a wild buffalo or wild bison carcass to help defray expenses of the department. If the carcass is sold in this manner, the department shall deposit any revenue derived from the sale of the wild buffalo or wild bison carcass to the state special revenue fund to the credit of the department.

(4) The department may adopt rules with regard to management of publicly owned wild buffalo or wild bison that enter Montana on private or public land and that are from a herd that is infected with a contagious disease that may spread to persons or livestock and may jeopardize compliance with other state-administered or federally administered livestock disease control programs.

(5) Except for a transfer to a qualified tribal entity pursuant to subsection (1)(a)(ii), after a wild buffalo or wild bison is certified brucellosis-free by the state veterinarian, the department may authorize its transplantation or relocation into any county in the state pursuant to this section after the department receives the authorization of the board of county commissioners of the affected county or counties pursuant to 7-21-3214.

History: En. Sec. 1, Ch. 346, L. 1995; amd. Sec. 2, Ch. 523, L. 1997; amd. Sec. 2, Ch. 604, L. 2003; amd. Sec. 3, Ch. 403, L. 2011; amd. Sec. 3, Ch. 354, L. 2021.

Cross-References

Transplantation or relocation of wild buffalo or wild bison into county — authorization, 7-21-3214.

Wild buffalo or bison as species in need of management — policy — duties of Department of Fish, Wildlife, and Parks, 87-1-216.

81-2-121. Taking of publicly owned wild buffalo or wild bison that are present on private property — notice — supplemental feeding — penalty. (1) This chapter may not be construed to impose, by implication or otherwise, criminal liability on a landowner or the agent of a landowner for the taking of a publicly owned wild buffalo or wild bison that is suspected of carrying disease and that is present on the landowner's private property and is potentially associating with or otherwise threatening the landowner's livestock if the landowner or agent:

(a) notifies or makes a good faith effort to notify the department in order to allow as much time as practicable for the department to first take or remove the publicly owned wild buffalo or wild bison that is present on the landowner's property;

(b) makes a good faith effort to notify the department that a taking has occurred and to retain all parts for disposal by the department; and

(c) is not in violation of subsection (2)(a).

(2) (a) A person may not intentionally provide supplemental feed to game animals in a manner that results in artificial concentration of game animals that may potentially contribute to the transmission of disease. A person who violates this subsection (2)(a) shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, a person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(b) This subsection (2) does not apply to supplemental feeding activities conducted by the department for disease control purposes.

History: En. Sec. 3, Ch. 540, L. 1995; amd. Sec. 84, Ch. 258, L. 2011; amd. Sec. 4, Ch. 403, L. 2011.

81-2-122. Containment required for inspection. (1) Livestock must be contained by the owner, agent, or custodian in a space appropriate for a required regulatory action under 81-2-102.

(2) The department may provide a chute and alley as needed to complete inspection or testing.

History: En. Sec. 1, Ch. 130, L. 2023.

Part 2
Indemnity

Part Cross-References

Indemnity, Title 28, ch. 11, part 3.

81-2-201. Classification of animals as to compensation for slaughter. Animals slaughtered due to disease under the direction of the department by order of the board may be paid for at 100% of the appraised value.

(1) Eligible animals include cattle, domestic bison, sheep, goats, swine, alternative livestock, and poultry.

(2) Diseases for which animals are eligible for indemnity include foreign animal diseases as classified by the United States department of agriculture, bovine tuberculosis, brucellosis, and chronic wasting disease.

(3) Animals that are injured or killed while they are being inspected or tested under an order of the department or its agent may be paid for at their full appraised value if the claim for the animal is recommended for payment at a meeting of the board when it is shown that the injury or death of the animal was not proximately due to the negligence of the owner or the owner's agent.

History: En. Sec. 12, Ch. 262, L. 1921; re-en. Sec. 3271, R.C.M. 1921; re-en. Sec. 3271, R.C.M. 1935; amd. Sec. 1, Ch. 75, L. 1943; amd. Sec. 1, Ch. 107, L. 1949; amd. Sec. 64, Ch. 310, L. 1974; amd. Sec. 13, Ch. 12, L. 1977; R.C.M. 1947, 46-218; amd. Sec. 2629, Ch. 56, L. 2009; amd. Sec. 2, Ch. 75, L. 2023.

81-2-202. Repealed. Sec. 8, Ch. 75, L. 2023.

History: En. Sec. 13, Ch. 262, L. 1921; re-en. Sec. 3272, R.C.M. 1921; re-en. Sec. 3272, R.C.M. 1935; amd. Sec. 2, Ch. 75, L. 1943; amd. Sec. 65, Ch. 310, L. 1974; R.C.M. 1947, 46-219.

81-2-203. Indemnity special revenue account — purpose — uses. (1) There is an account in the state special revenue fund established by 17-2-102 to be known as the indemnity special revenue account. The account is administered by the department.

(2) The department may deposit in the indemnity special revenue account an amount up to $10,000 annually. The principal may not exceed $100,000, and interest earned in the account is retained.

(3) Funds are statutorily appropriated to the department, as provided in 17-7-502, for the purpose of indemnity payments as authorized in 81-2-201.

History: En. Sec. 14, Ch. 262, L. 1921; re-en. Sec. 3273, R.C.M. 1921; re-en. Sec. 3273, R.C.M. 1935; amd. Sec. 66, Ch. 310, L. 1974; amd. Sec. 14, Ch. 12, L. 1977; R.C.M. 1947, 46-220; amd. Sec. 3, Ch. 75, L. 2023.

81-2-204. Presentation of claims for indemnity. Claims against the state that arise from the destruction of animals or property by order of the department must contain an affidavit by the owner or the owner's agent with knowledge of the animal or property, certifying to the ownership of the animal or property, and that the animal or property has been destroyed under the law and the rules of the department. The claims must be accompanied by a certificate of appraisal together with an account of sale showing the net proceeds from the sale of the animal, if any, paid to the owner of the animal.

History: En. Sec. 15, Ch. 262, L. 1921; re-en. Sec. 3274, R.C.M. 1921; re-en. Sec. 3274, R.C.M. 1935; amd. Sec. 4, Ch. 75, L. 1943; amd. Sec. 67, Ch. 310, L. 1974; R.C.M. 1947, 46-221; amd. Sec. 2630, Ch. 56, L. 2009; amd. Sec. 4, Ch. 75, L. 2023.

81-2-205. Repealed. Sec. 8, Ch. 75, L. 2023.

History: En. Sec. 5, Ch. 75, L. 1943; amd. Sec. 68, Ch. 310, L. 1974; R.C.M. 1947, 46-222.

81-2-206. Repealed. Sec. 8, Ch. 75, L. 2023.

History: (1)En. Sec. 2, Ch. 262, L. 1921; re-en. Sec. 3261, R.C.M. 1921; re-en. Sec. 3261, R.C.M. 1935; amd. Sec. 20, Ch. 97, L. 1961; amd. Sec. 51, Ch. 310, L. 1974; Sec. 46-202, R.C.M. 1947; (2)En. Sec. 16, Ch. 262, L. 1921; re-en. Sec. 3275, R.C.M. 1921; re-en. Sec. 3275, R.C.M. 1935; amd. Sec. 21, Ch. 97, L. 1961; amd. Sec. 69, Ch. 310, L. 1974; amd. Sec. 15, Ch. 12, L. 1977; Sec. 46-224, R.C.M. 1947; R.C.M. 1947, 46-202, 46-224; amd. Sec. 2631, Ch. 56, L. 2009.

81-2-207. Repealed. Sec. 8, Ch. 75, L. 2023.

History: En. Sec. 17, Ch. 262, L. 1921; re-en. Sec. 3276, R.C.M. 1921; re-en. Sec. 3276, R.C.M. 1935; R.C.M. 1947, 46-225.

81-2-208. Sale of condemned carcasses — disposition of proceeds. When the carcass of an animal ordered destroyed under this chapter is found on official postmortem inspection to be fit for human consumption, the owner must receive the net proceeds from the sale of the carcass. The proceeds must be deducted from the owner's claim against the state and county for the slaughter.

History: En. Sec. 18, Ch. 262, L. 1921; re-en. Sec. 3277, R.C.M. 1921; re-en. Sec. 3277, R.C.M. 1935; amd. Sec. 1, Ch. 177, L. 1937; amd. Sec. 70, Ch. 310, L. 1974; amd. Sec. 16, Ch. 12, L. 1977; R.C.M. 1947, 46-226; amd. Sec. 2632, Ch. 56, L. 2009; amd. Sec. 5, Ch. 75, L. 2023.

81-2-209. When no indemnity. (1) The owner of an animal or property destroyed under this chapter is entitled to indemnity, except in the following cases:

(a) animals belonging to the United States;

(b) animals brought into this state that violate this chapter or rules of the department;

(c) animals that the owner or claimant knew to be diseased or had notice of the disease at the time they came into the owner's or claimant's possession;

(d) animals that had the disease for which they were slaughtered or that were destroyed because of exposure to the disease at the time of their arrival in this state;

(e) animals that have not been in this state for at least 120 days before the discovery of the disease;

(f) when the owner or agent has not used reasonable diligence to prevent disease or exposure to disease;

(g) when the owner or agent has not complied with the rules of the department with respect to animals condemned;

(h) when animals condemned are not destroyed within 60 days after they are determined to be affected with or exposed to a disease that requires them to be destroyed by order of the department.

(2) Compensation or indemnity will not be paid for the destruction of livestock affected with tuberculosis or other infectious, contagious, communicable, or dangerous disease unless the entire herd or band of affected livestock is under the supervision of the department for the eradication of the disease.

History: En. Sec. 19, Ch. 262, L. 1921; re-en. Sec. 3278, R.C.M. 1921; re-en. Sec. 3278, R.C.M. 1935; amd. Sec. 22, Ch. 97, L. 1961; amd. Sec. 72, Ch. 310, L. 1974; amd. Sec. 17, Ch. 12, L. 1977; R.C.M. 1947, 46-228; amd. Sec. 2633, Ch. 56, L. 2009; amd. Sec. 6, Ch. 75, L. 2023.

81-2-210. Compensation from federal government or other agency. (1) If the federal government or an agency other than the state compensates the owner for livestock or property destroyed by order of the department, the amount of the compensation from the federal government or other agency must be deducted from the owner's claim as filed against the state, that is, from the balance that remains after the net salvage price received from the sale or other disposal of the condemned animal has been deducted from the appraised value.

(2) If the owner or agent of the livestock or property destroyed by order of the department forfeits an indemnity, which the owner would otherwise be entitled to from the federal government or compensating agency other than the state, by violation of the rules of the federal government or other agency, an amount equal to the indemnity, which would have been paid by the federal government or other indemnifying agency but for the forfeiture must also be deducted from the owner's claim; that is, the balance that remains after the net salvage price received from the sale or other disposal of the condemned animal has been deducted from the appraised value.

History: En. Sec. 20, Ch. 262, L. 1921; re-en. Sec. 3279, R.C.M. 1921; re-en. Sec. 3279, R.C.M. 1935; amd. Sec. 3, Ch. 75, L. 1943; amd. Sec. 1, Ch. 164, L. 1945; amd. Sec. 73, Ch. 310, L. 1974; R.C.M. 1947, 46-229; amd. Sec. 7, Ch. 75, L. 2023.

Part 3
Disease Control Area

81-2-301. Establishment of livestock disease control area — entry into area — compulsory inspection. (1) Upon receipt of a petition signed by not less than 75% of the livestock owners of the species of animals to be inspected, tested, treated, or vaccinated, representing not less than 50% of such species in any school district, as determined from the permanent records of the board of county commissioners describing school district boundaries of any county in the state of Montana, petitioning for the area control, treatment, prevention, or eradication of any dangerous disease of livestock within such school district, the board may establish such school district as a disease control area and may enforce the inspection, test, treatment, or vaccination of all livestock of the species designated within such school district in accordance with the rules promulgated by the department for the inspection, eradication, treatment, or vaccination of such livestock and may reimburse the owners of livestock slaughtered by order of the department or its authorized agent in accordance with the laws of Montana governing the payment of such animal or animals.

(2) In any circumscribed disease control area as established under this section by the department, no other livestock of the species designated by the department to be inspected, tested, treated, or vaccinated may enter the disease control area unless inspected, tested, treated, or vaccinated under the direction of the department or accompanied by a satisfactory health certificate or except under special permit and restrictions provided by the department.

(3) When 75% or more of the school districts in any county in Montana are established under this section by the department as disease control areas, it becomes mandatory on the part of the remaining livestock owners in such county to submit their livestock of one or more species for inspection, test, treatment, or vaccination, as directed by the department.

History: En. Sec. 1, Ch. 94, L. 1943; amd. Sec. 1, Ch. 27, L. 1973; amd. Sec. 11, Ch. 12, L. 1977; R.C.M. 1947, 46-212.

81-2-302. Duty of department of revenue. The property tax record of the county in which the disease control area is to be established is the basis for computing the required percentage of livestock owners and livestock. The department of revenue shall certify to the department when the necessary 75% of the owners of livestock representing not less than 50% of the species of livestock to be inspected, tested, treated, or vaccinated have signed the required petition.

History: En. Sec. 2, Ch. 94, L. 1943; amd. Sec. 60, Ch. 310, L. 1974; R.C.M. 1947, 46-213; amd. Sec. 149, Ch. 27, Sp. L. November 1993.

Cross-References

Taxation — assessment of livestock, Title 15, ch. 24, part 9.

81-2-303. Owner guilty of misdemeanor, when. A person in a disease control area who does not gather the person's livestock after being notified by the department or its agent to have the livestock available or who refuses to have the livestock inspected, tested, treated, or vaccinated or who violates this part is guilty of a misdemeanor.

History: En. Sec. 3, Ch. 94, L. 1943; amd. Sec. 61, Ch. 310, L. 1974; R.C.M. 1947, 46-214; amd. Sec. 2634, Ch. 56, L. 2009.

Cross-References

Penalty for misdemeanor, 46-18-212.

Part 4
Regulation of Semen Used for Artificial Insemination (Repealed)

81-2-401. Repealed. Sec. 2, Ch. 125, L. 2019.

History: En. Secs. 2, 3, Ch. 37, L. 1953; R.C.M. 1947, 46-2502, 46-2503.

81-2-402. Repealed. Sec. 2, Ch. 125, L. 2019.

History: En. Sec. 5, Ch. 37, L. 1953; amd. Sec. 2, Ch. 102, L. 1973; R.C.M. 1947, 46-2505.

81-2-403. Repealed. Sec. 2, Ch. 125, L. 2019.

History: En. Sec. 15, Ch. 37, L. 1953; amd. Sec. 1, Ch. 102, L. 1973; amd. Sec. 170, Ch. 310, L. 1974; R.C.M. 1947, 46-2515.

Part 5
Treatment of Garbage Fed to Swine

81-2-501. Definitions. When used in this part, the following definitions apply:

(1) (a) "Garbage" means:

(i) waste material derived in whole or in part from the meat of an animal, including fish and poultry, or from other animal materials, including animal carcasses;

(ii) other waste materials resulting from the handling, preparation, cooking, or consumption of food; or

(iii) packaging materials.

(b) The term does not include other waste materials that do not contain animal products.

(2) "Person" means the state, any municipality, political subdivision, school district, institution, public or private corporation, individual, partnership, or other entity.

History: En. Sec. 1, Ch. 63, L. 1953; R.C.M. 1947, 46-2601; amd. Sec. 1, Ch. 47, L. 2013; amd. Sec. 1, Ch. 126, L. 2023; amd. Sec. 25, Ch. 53, L. 2025; amd. Sec. 1, Ch. 576, L. 2025.

Compiler's Comments

2025 Amendments — Composite Section: See 2025 Session Law for amendment made by sec. 25, Ch. 53, L. 2025. Amendment effective October 1, 2025.

See 2025 Session Law for amendment made by sec. 1, Ch. 576, L. 2025. Amendment effective October 1, 2025.

81-2-502. Illegal to feed garbage to swine. (1) It is unlawful to:

(a) handle, prepare, cook, or otherwise treat garbage to feed to swine or other animals; or

(b) feed garbage to swine or other animals.

(2) This part does not apply to a person who feeds only the person's own household garbage to swine or other animals under their ownership.

History: En. Sec. 2, Ch. 63, L. 1953; amd. Sec. 171, Ch. 310, L. 1974; R.C.M. 1947, 46-2602; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 6, Ch. 444, L. 1983; amd. Sec. 2635, Ch. 56, L. 2009; amd. Sec. 2, Ch. 126, L. 2023; amd. Sec. 2, Ch. 576, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 2, Ch. 576, L. 2025. Amendment effective October 1, 2025.

81-2-503. Repealed. Sec. 5, Ch. 126, L. 2023.

History: En. Sec. 3, Ch. 63, L. 1953; amd. Sec. 172, Ch. 310, L. 1974; R.C.M. 1947, 46-2603.

81-2-504. Power to adopt rules. The department shall administer and enforce this part, including the adoption and enforcement of rules or orders as necessary.

History: En. Sec. 4, Ch. 63, L. 1953; amd. Sec. 173, Ch. 310, L. 1974; R.C.M. 1947, 46-2604; amd. Sec. 3, Ch. 126, L. 2023.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

81-2-505. Repealed. Sec. 5, Ch. 126, L. 2023.

History: En. Sec. 5, Ch. 63, L. 1953; amd. Sec. 174, Ch. 310, L. 1974; R.C.M. 1947, 46-2605.

81-2-506. Power to administer oaths, subpoena witnesses, and receive evidence. The department or its agent may administer oaths, subpoena witnesses, and receive evidence in order to carry out this part.

History: En. Sec. 8, Ch. 63, L. 1953; amd. Sec. 177, Ch. 310, L. 1974; R.C.M. 1947, 46-2608.

Cross-References

Oaths, Title 1, ch. 6.

Subpoenas in administrative proceedings, 2-4-104.

Subpoenas generally, Title 26, ch. 2, part 1.

81-2-507. Repealed. Sec. 5, Ch. 126, L. 2023.

History: En. Sec. 6, Ch. 63, L. 1953; amd. Sec. 175, Ch. 310, L. 1974; R.C.M. 1947, 46-2606.

81-2-508. Repealed. Sec. 5, Ch. 126, L. 2023.

History: En. Sec. 7, Ch. 63, L. 1953; amd. Sec. 176, Ch. 310, L. 1974; R.C.M. 1947, 46-2607.

81-2-509. Repealed. Sec. 5, Ch. 126, L. 2023.

History: En. Sec. 9, Ch. 63, L. 1953; amd. Sec. 178, Ch. 310, L. 1974; R.C.M. 1947, 46-2609.

81-2-510. Garbage originating on or removed from airplanes not to be fed. Garbage originating on or removed from airplanes landing in this state may not be fed to swine or other animals.

History: En. Sec. 10, Ch. 63, L. 1953; amd. Sec. 179, Ch. 310, L. 1974; R.C.M. 1947, 46-2610; amd. Sec. 4, Ch. 126, L. 2023.

Cross-References

Airport operations, Title 67, ch. 10, part 3.

81-2-511. Penalties. (1) A person who violates this part is guilty of a misdemeanor and is subject to a fine of not less than $50 or more than $250, imprisonment for not more than 6 months, or both.

(2) A court may issue an injunction to prohibit a person from repeating a violation of this part.

(3) Each day of violation constitutes a separate violation for the purposes of this section.

History: En. Sec. 11, Ch. 63, L. 1953; R.C.M. 1947, 46-2611; amd. Sec. 3, Ch. 576, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 3, Ch. 576, L. 2025. Amendment effective October 1, 2025.

Part 6
Tuberculin Regulation

81-2-601. Tuberculin — permission for sale or distribution of. A person, firm, or corporation desiring to sell or distribute tuberculin for animal use in this state must first secure permission from the department.

History: En. Sec. 1, Ch. 118, L. 1917; re-en. Sec. 3296, R.C.M. 1921; re-en. Sec. 3296, R.C.M. 1935; amd. Sec. 84, Ch. 310, L. 1974; R.C.M. 1947, 46-301.

81-2-602. Report of sales or distribution. A person, firm, or corporation that has secured permission from the department to sell or distribute tuberculin for animal use in this state shall, on the same day it sells, furnishes, or supplies tuberculin, report in writing to the department the name and address of the person and a statement of the amount of tuberculin supplied to the person.

History: En. Sec. 2, Ch. 118, L. 1917; re-en. Sec. 3297, R.C.M. 1921; re-en. Sec. 3297, R.C.M. 1935; amd. Sec. 85, Ch. 310, L. 1974; R.C.M. 1947, 46-302; amd. Sec. 2636, Ch. 56, L. 2009.

81-2-603. Violation — penalty. Any person, firm, or corporation violating any of the provisions of this part shall be guilty of a misdemeanor and punished by a fine of not less than $25 and not more than $500 or by imprisonment for not less than 30 days and not more than 90 days or both fine and imprisonment.

History: En. Sec. 3, Ch. 118, L. 1917; re-en. Sec. 3298, R.C.M. 1921; re-en. Sec. 3298, R.C.M. 1935; R.C.M. 1947, 46-303.

Part 7
Importation Permits and Health Certificates

Part Cross-References

How expenses paid — lien and foreclosure, 81-2-109.

Quarantine of diseased animals, 81-8-215.

81-2-701. Short title. This part may be cited as the "Animal Importation Permit and Health Certificate Act of 1981".

History: En. Sec. 1, Ch. 65, L. 1981.

81-2-702. Definitions. As used in this part, the following definitions apply:

(1) "Animals" means livestock, dogs, cats, rabbits, rodents, game animals, fur-bearing and wild animals, and poultry and other birds.

(2) "Biologics" means medicinal preparations made from living organisms and their products. The term includes but is not limited to serums, vaccines, antigens, and antitoxins.

(3) "Department" means the department of livestock.

(4) "Health certificate" means a legible record written on an official health certificate form of the state of origin or on an equivalent form of the U.S. department of agriculture attesting that the animals, animal semen, or animal biologics described on the certificate have been visually

inspected by a federally accredited veterinarian and found to meet the entry requirements of the state of Montana.

(5) "Livestock" means cattle, horses, mules, asses, sheep, llamas, alpacas, bison, swine, ostriches, rheas, emus, goats, alternative livestock as defined in 87-4-406, and other animals for purposes of disease prevention, control, and eradication.

(6) "Permit" means an official document issued by the department after proper application that allows the movement of animals, animal semen, or animal biologics into Montana.

(7) "Poultry" means domesticated birds, including but not limited to chickens, turkeys, ducks, geese, guinea fowl, pigeons, and pheasants.

History: En. Sec. 2, Ch. 65, L. 1981; amd. Sec. 1, Ch. 166, L. 1989; amd. Sec. 6, Ch. 531, L. 1991; amd. Sec. 3, Ch. 417, L. 1993; amd. Sec. 8, Ch. 206, L. 1995; amd. Sec. 4, Ch. 574, L. 1999.

81-2-703. Documents required for importation — exemptions. (1) Animals, animal semen, and animal biologics may not be brought into the state if significant danger to public or animal health will result upon entry into the state. Livestock infected with or exposed to brucellosis, tuberculosis, or any other infectious, contagious, or communicable disease may not enter the state unless destined directly for slaughter at a slaughterhouse under the supervision of the United States department of agriculture.

(2) Except as provided in subsection (6), an animal or animal semen may not be brought into the state without a health certificate or other documentation of animal movement approved by the department.

(3) Prior to entry into the state, the department may also require a permit for animals, animal semen, or animal biologics.

(4) The department may waive the requirement for a health certificate, permit, or documentation of animal movement as provided in subsection (7).

(5) All required documents must be attached to the waybill or be in possession of the driver of the transporting vehicle or of the person in charge of the animals. When a single permit or health certificate is issued for animals being moved in more than one vehicle, the driver of each vehicle must have in the driver's possession a copy of the permit and, when applicable, a health certificate.

(6) Animals, animal semen, or animal biologics being moved through the state with no intent to unload or deliver in the state are exempted from this part. In an emergency situation, transitory cargo may be unloaded in compliance with the quarantine rules promulgated by the department.

(7) A waiver of the requirement for a health certificate, permit, or documentation of animal movement must be based upon evidence that there will be no significant danger to the public or animal health if the exemption is granted.

History: En. Sec. 3, Ch. 65, L. 1981; amd. Sec. 1, Ch. 44, L. 1983; amd. Sec. 2637, Ch. 56, L. 2009; amd. Sec. 1, Ch. 125, L. 2019.

81-2-704. Quarantine for illegal entry — liability for expenses. (1) Animals, animal semen, or animal biologics which enter the state of Montana without the required importation papers or in violation of any rules of the department shall be held in quarantine at the risk of the owner.

(2) The quarantine may be released only after the department has been satisfied, by appropriate means, that the animals, animal semen, or animal biologics under quarantine meet the requirements of law and the rules of the department.

(3) The owner of animals, animal semen, or animal biologics quarantined under this part is liable for all department expenses resulting from that quarantine except the expense of the salary of the supervising officer representing the department. Expenses include, but are not limited to, the expense of inspecting, testing, supervision of quarantine, supervision of dipping, supervision of disinfection, supervision of treatment, and laboratory testing.

History: En. Sec. 4, Ch. 65, L. 1981.

81-2-705. Lien resulting from quarantine — foreclosure of lien. (1) In accordance with the provisions of 81-2-109, the expenses of quarantine detailed in 81-2-704 are a lien on the animals, semen, or biologics and the department may retain possession of them until the

charges and expenses are paid. The lien is dependent on possession and may be foreclosed in the name of the agent of the department by sale at public auction of the animals, semen, or biologics or as much of them as may be necessary to pay the expenses.

(2) Posting notice for 10 days at three public places in the county is required prior to auction. The lien may also be foreclosed by filing an action against the owner of the property to recover the amount of charges and expenses in a court of competent jurisdiction.

History: En. Sec. 5, Ch. 65, L. 1981.

Cross-References

Liens — general provisions, Title 71, ch. 3, part 1.

81-2-706. Consignment requirements. (1) All animals, animal semen, or animal biologics brought into Montana, other than transitory cargo, must be consigned to or in the care of a person, entity, or authorized agent of either located in Montana.

(2) The person, entity, or authorized agent must notify the department of its intent to receive any animals, animal semen, or animal biologics and is responsible for acquiring all required permits and ensuring that they are accompanied by all required health certificates.

(3) No person consigning, transporting, or receiving animals, animal semen, or animal biologics into Montana may authorize, order, or carry out any diversion of them or any portion thereof to a destination or consignee other than as set forth on the permit or health certificate without first obtaining written permission from the department.

History: En. Sec. 6, Ch. 65, L. 1981.

81-2-707. Department rulemaking power. The department may promulgate, administer, and enforce rules necessary to implement this part.

History: En. Sec. 7, Ch. 65, L. 1981.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

81-2-708. Penalty. (1) Except as provided in subsection (2), a person convicted of violating this part shall be fined not more than $500, be imprisoned in the county jail for a term not to exceed 6 months, or both.

(2) A person convicted of violating this part by importing livestock into the state without a required health certificate, permit, or other documentation authorized by department rule shall be fined not less than $500 per animal or $5,000, whichever is greater.

History: En. Sec. 8, Ch. 65, L. 1981; amd. Sec. 1, Ch. 194, L. 2023.

Part 8
Vaccination
(Repealed)

81-2-801. Repealed. Sec. 1, Ch. 153, L. 1999.

History: En. Sec. 1, Ch. 111, L. 1981; amd. Sec. 1, Ch. 54, L. 1997.

81-2-802 through 81-2-804 reserved.

81-2-805. Repealed. Sec. 1, Ch. 153, L. 1999.

History: En. Sec. 1, Ch. 10, L. 1985.

CHAPTER 3
MARKS AND BRANDS

Part 1 — Recording of Marks and Brands

81-3-101. Recorder of marks and brands.
81-3-102. Recording of brands required — alternative livestock to be marked — limit.
81-3-103. Application for recording — record of brands.
81-3-104. Designation of years for rerecording brands.
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Part 2 — Inspection of Marks and Brands

81-3-201. Definitions.
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81-3-210. Bill of sale required to prove ownership.
81-3-211. Inspection of livestock before change of ownership or removal from county — transportation permits.
81-3-212. Exceptions.
81-3-213. Inspection of livestock removed from state.
81-3-214. Repealed.
81-3-215. Repealed.
81-3-216. Repealed.
81-3-217 through 81-3-220 reserved.
81-3-221. Brands fraudulently changed.
81-3-222. Compensation for animals killed.
81-3-223. Action by dissatisfied owner — costs.
81-3-224 through 81-3-230 reserved.
81-3-231. Penalties.
81-3-232. Repealed.
81-3-233. Penalty for removal of livestock from state without inspection — exception.

Part 1
Recording of Marks and Brands

Part Cross-References

Employment of stock inspector, 7-21-3211 and 7-21-3212.
Jurisdiction of highway patrol officers — criminal mischief, 44-1-1001.
Illegal branding or altering or obscuring of brand, 45-6-327.

81-3-101. Recorder of marks and brands. The department of livestock is the general recorder of marks and brands.

History: En. Sec. 2940, Pol. C. 1895; re-en. Sec. 1790, Rev. C. 1907; re-en. Sec. 3299, R.C.M. 1921; re-en. Sec. 3299, R.C.M. 1935; amd. Sec. 89, Ch. 310, L. 1974; R.C.M. 1947, 46-601.

81-3-102. Recording of brands required — alternative livestock to be marked — limit. (1) It is unlawful for a person to artificially brand, mark, or cause to be artificially branded or marked any domestic animal or livestock running at large on the public domain or open range or that may run or stray at large on the public domain or open range, unless the artificial brand or mark has been recorded or rerecorded with the department in the name of the person within the period of 10 years immediately preceding the branding or marking.

(2) Alternative livestock, as defined in 87-4-406, must be identified by use of a recorded whole herd mark or brand in compliance with the requirements of Title 87, chapter 4, and this chapter.

(3) No more than five brands may be recorded or rerecorded by one person.

History: En. Sec. 1, Ch. 144, L. 1921; re-en. Sec. 3301, R.C.M. 1921; re-en. Sec. 3301, R.C.M. 1935; amd. Sec. 90, Ch. 310, L. 1974; R.C.M. 1947, 46-603; amd. Sec. 2, Ch. 6, L. 1991; amd. Sec. 1, Ch. 30, L. 1993; amd. Sec. 5, Ch. 574, L. 1999.

Cross-References

Branding animals running at large, 81-4-214.
Security interests concerning livestock, Title 81, ch. 8, part 3.

81-3-103. Application for recording — record of brands. (1) A person desiring to have recorded an artificial mark or brand for use in distinguishing or identifying the ownership of any domestic animal or livestock shall make application for the mark or brand to the department. The application must be in writing and must contain the name, residence, and post-office address of the applicant and the species of the animals on which the mark or brand is to be used. An applicant may apply for a seasonal mark or brand that is designated for use only for a specific period of time and that is subject to renewal upon termination of that period.

(2) The department shall designate for the applicant's use some practical form of mark or brand distinguishable with reasonable certainty from all other marks and brands recorded or rerecorded, within the period of 10 years immediately preceding the time of filing the application, in the name of some person other than the applicant. The department shall designate the position on the animals where the mark or brand must be placed and the species of animals on which the mark or brand may be used.

(3) The board may review applications that contain characters or images within a proposed mark or brand that is not currently recorded with the department.

(4) The department shall record each particular mark or brand, the position on the animals where the mark or brand is to be used, the species of animals on which the mark or brand is to be used, and the date of recording. The record is a public record and is prima facie evidence of the facts recorded in it.

History: En. Sec. 2, Ch. 144, L. 1921; re-en. Sec. 3302, R.C.M. 1921; re-en. Sec. 3302, R.C.M. 1935; amd. Sec. 91, Ch. 310, L. 1974; R.C.M. 1947, 46-604; amd. Sec. 2, Ch. 166, L. 1989; amd. Sec. 3, Ch. 6, L. 1991; amd. Sec. 1, Ch. 217, L. 2023.

Cross-References

Public records, Title 2, ch. 6.

81-3-104. Designation of years for rerecording brands. Each 10th year after 1921 is the year for rerecording artificial marks and brands used to distinguish and identify the ownership of domestic animals and livestock. Subject to the provisions of 81-3-102(3), the department shall, on the application of a person or the transferee of the person made in a year that is a year for rerecording marks and brands, rerecord a mark or brand that at the time of the application is recorded with the department in the name of the person. A mark or brand that was not originally recorded or rerecorded in the name of the person during the rerecording year last preceding the date when the application is filed or that was not originally recorded in the name of the person or the person's predecessor or predecessors in interest between the time of the application and the rerecording year last preceding the application is not of record in the department.

History: En. Sec. 3, Ch. 144, L. 1921; re-en. Sec. 3303, R.C.M. 1921; re-en. Sec. 3303, R.C.M. 1935; amd. Sec. 92, Ch. 310, L. 1974; amd. Sec. 27, Ch. 12, L. 1977; R.C.M. 1947, 46-605; amd. Sec. 4, Ch. 6, L. 1991; amd. Sec. 2, Ch. 30, L. 1993; amd. Sec. 1, Ch. 14, L. 1995.

81-3-105. Right of owner of recorded brand. A person in whose name a mark or brand is recorded is entitled to the exclusive use of the mark or brand on the species of animal and in the position designated in the record. A copy of the record certified by the department is prima facie evidence of this right, and the certificate is also prima facie evidence that the person entitled to use the mark or brand is the owner of all animals on which it appears in the position and on the species of animal stated in the certificate.

History: En. Sec. 4, Ch. 144, L. 1921; re-en. Sec. 3304, R.C.M. 1921; re-en. Sec. 3304, R.C.M. 1935; amd. Sec. 93, Ch. 310, L. 1974; R.C.M. 1947, 46-606; amd. Sec. 5, Ch. 6, L. 1991.

81-3-106. Publication of notice of rerecording brands. Between January 1 and June 30 in each rerecording year, the department shall publish, in at least one issue of at least one newspaper of general circulation in each county of this state in which a newspaper is published, a notice to the effect that the year is a year for rerecording marks and brands and that no mark or brand continues of record unless rerecorded. The department shall also mail to each person in whose name a mark or brand stands of record a similar notice addressed to the person at the person's post-office address as shown by the records in the department.

History: En. Sec. 5, Ch. 144, L. 1921; re-en. Sec. 3305, R.C.M. 1921; re-en. Sec. 3305, R.C.M. 1935; amd. Sec. 94, Ch. 310, L. 1974; R.C.M. 1947, 46-607; amd. Sec. 6, Ch. 6, L. 1991; amd. Sec. 2638, Ch. 56, L. 2009.

81-3-107. Fees for department — deposit requirements. (1) The department shall establish, charge, and collect a fee for recording a new mark or brand, for recording a mark or brand transfer, or for rerecording a mark or brand. The department shall establish and charge a fee for providing a certified copy of a record and a duplicate certificate. The department may upon request research mark or brand histories and may charge a fee of up to $50 for each mark or brand, based on time involved in research. All fees collected must be paid into the state special revenue fund for the use of the department. However, not more than 10% of the net

rerecording fees after all expenses of rerecording are paid may be expended in any 1 year except in case of an emergency declared by the governor or the board.

(2) Money collected as fees under subsection (1) is subject to the deposit requirements of 17-6-105(6) unless the department has submitted and received approval for a modified deposit schedule pursuant to 17-6-105(8).

History: En. Sec. 7, Ch. 144, L. 1921; re-en. Sec. 3307, R.C.M. 1921; amd. Sec. 1, Ch. 14, L. 1929; re-en. Sec. 3307, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1949; amd. Sec. 1, Ch. 65, L. 1959; amd. Sec. 90, Ch. 147, L. 1963; amd. Sec. 1, Ch. 13, L. 1969; amd. Sec. 95, Ch. 310, L. 1974; amd. Sec. 1, Ch. 10, L. 1977; R.C.M. 1947, 46-609; amd. Sec. 1, Ch. 34, L. 1983; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 7, Ch. 444, L. 1983; amd. Sec. 2, Ch. 14, L. 1995; amd. Sec. 4, Ch. 420, L. 2007.

Cross-References

Employment of stock inspector, 7-21-3211 and 7-21-3212.

Jurisdiction of highway patrol officers — criminal mischief, 44-1-1001.

81-3-108. Penalty. A person violating any provision of this part is guilty of a misdemeanor and shall be punished by a fine not exceeding $1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both.

History: En. Sec. 6, Ch. 144, L. 1921; re-en. Sec. 3306, R.C.M. 1921; re-en. Sec. 3306, R.C.M. 1935; R.C.M. 1947, 46-608; amd. Sec. 7, Ch. 6, L. 1991.

Cross-References

Penalty for branding at certain times, 81-4-214.

Part 2
Inspection of Marks and Brands

Part Cross-References

Special levies on commodities for livestock and commodity inspection, Art. XII, sec. 1, Mont. Const.

Employment of stock inspector, 7-21-3211 and 7-21-3212.

Illegal brand or alteration — penalty, 45-6-327.

Cancellation or suspension of livestock market certificate for violation of this part, 81-8-254.

Security interests concerning livestock, Title 81, ch. 8, part 3.

81-3-201. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Deputy state stock inspector" means a person designated by the department as a deputy state stock inspector who does not receive a salary or compensation from the department.

(2) "Feedlot" means a confined livestock feeding operation where the owner or operator of the feedlot feeds livestock belonging to others for a fee.

(3) "Livestock" means a bovine animal, domestic bison, horse, mule, or ass, regardless of its age or sex.

(4) "Person" means an individual, partnership, corporation, association, firm, or entity not enumerated that is capable of owning or controlling livestock.

(5) "Specially qualified deputy stock inspector" means a deputy state stock inspector who has been certified by the department, under rules adopted pursuant to 81-3-202, as qualified to conduct an inspection for a permanent transportation permit for a saddle, work, or show horse.

(6) "State stock inspector" means an employee of the department of livestock designated by the department as a state stock inspector.

History: (1), (3) thru (5)En. Sec. 103, Ch. 310, L. 1974; amd. Sec. 1, Ch. 41, L. 1977; Sec. 46-801.1, R.C.M. 1947; (2)En. Sec. 1, Ch. 32, L. 1974; Sec. 46-239.1, R.C.M. 1947; R.C.M. 1947, 46-239.1, 46-801.1; amd. Sec. 1, Ch. 298, L. 1979; amd. Sec. 1, Ch. 6, L. 1991; amd. Sec. 3, Ch. 30, L. 1993; amd. Sec. 4, Ch. 417, L. 1993; amd. Sec. 1, Ch. 376, L. 1997; amd. Sec. 5, Ch. 403, L. 2011.

Cross-References

State stock inspector — hide dealers — slaughterhouses, 81-9-401.

81-3-202. Rules. The department may adopt rules necessary to carry out this part.

History: En. Sec. 2, Ch. 59, L. 1943; amd. Sec. 2, Ch. 184, L. 1953; amd. Sec. 2, Ch. 142, L. 1957; amd. Sec. 1, Ch. 35, L. 1969; amd. Sec. 2, Ch. 149, L. 1971; amd. Sec. 2, Ch. 247, L. 1973; amd. Sec. 106, Ch. 310, L. 1974; amd. Sec. 2, Ch. 312, L. 1977; R.C.M. 1947, 46-802(5).

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

Authority of highway patrol officers to stop vehicles and determine rightful possession of livestock, 44-1-1004.

81-3-203. Duties of state stock inspectors and deputy stock inspectors. (1) State stock inspectors and deputy state stock inspectors, upon the application of the owner or the authorized agent of the owner of livestock, shall inspect livestock that are intended for sale, removal, shipment, or slaughter at a licensed slaughter plant and issue a certificate of inspection for the livestock if it appears with reasonable certainty that the applicant is the owner of the livestock or has the lawful right to possess the livestock.

(2) The inspection must include an examination of the livestock and all marks and brands on the livestock to identify ownership of the livestock. The certificate of inspection must specify the date of inspection, the place of origin and place of destination of the shipment, the name and address of the owner of the livestock or of the applicant for inspection and the purchaser or transferee, if applicable, the class of the animal, the marks and brands, if any, on the animal, and any other information on the certificate that the department may require. A copy of the certificate must be retained by the inspector, a copy must be furnished by the inspector to the owner or shipper of the livestock, and a copy must be filed by the inspector with the department within 5 days.

(3) If it appears with reasonable certainty that the applicant is the owner of the livestock or has the lawful right to possess the livestock, the state stock inspectors or deputy state stock inspectors, upon application of an owner or the owner's agent of the livestock to be consigned and delivered directly to a licensed livestock market or licensed livestock slaughterhouse located in another county of the state or delivered directly to a shipping point approved by the department where a livestock inspector is available for inspection in an adjoining county, shall issue to the person a separate market consignment permit or transportation permit for each owner when the owner or owners or their authorized agents sign the permit certifying the brands, description, and destination of the livestock. The market consignment permit or transportation permit must specify the date and time issued, the place of origin and place of destination of the shipment, the name and address of the owner of the livestock and the name and address of the person actually transporting the livestock if different from the owner, the kind of livestock, the marks and brands, if any, on the livestock, a description of the vehicle or vehicles to be used to transport the livestock, including the license number of the vehicles, and any other information on the permit that the department may require. A permit issued is good for shipment within 36 hours from the date and time of issue. However, permits not used within this time limitation must be returned to the issuing officer to be canceled and to release the permittee from performance. A copy of the permit must be retained by the inspector, a copy must be filed by the inspector with the department within 5 days of the date of issue, and a copy must be furnished by the inspector to the owner or shipper of the livestock. The owner's or shipper's copy of the permit must accompany the shipment and be delivered to the state stock inspector at the livestock market or shipping point where the livestock are delivered.

(4) Upon application of an owner or the owner's agent, when it appears with reasonable certainty that the applicant is the owner of the livestock or has lawful right to possess the livestock, a state stock inspector shall issue a transportation permit that will allow the movement of the livestock for purposes of grazing. The transportation permit must state the breed, description, marks and brands, if any, head count, and description of land to and from which the livestock will be moved. The permit is valid as provided in and subject to 81-3-211(6)(e). A state stock inspector may enter the premises where livestock have been transported and inspect any livestock moved under the transportation permit or any livestock commingled with the transported livestock.

(5) A person transporting strays or livestock not lawfully under that person's control is guilty of a misdemeanor and is punishable as provided in 81-3-231.

History: En. Sec. 2, Ch. 59, L. 1943; amd. Sec. 2, Ch. 184, L. 1953; amd. Sec. 2, Ch. 142, L. 1957; amd. Sec. 1, Ch. 35, L. 1969; amd. Sec. 2, Ch. 149, L. 1971; amd. Sec. 2, Ch. 247, L. 1973; amd. Sec. 106, Ch. 310, L. 1974; amd. Sec. 2, Ch. 312, L. 1977; R.C.M. 1947, 46-802(1) thru (4); amd. Sec. 1, Ch. 235, L. 1979; amd. Sec. 3, Ch. 166, L. 1989; amd. Sec. 2639, Ch. 56, L. 2009; amd. Sec. 1, Ch. 290, L. 2009; amd. Sec. 1, Ch. 120, L. 2017; amd. Sec. 1, Ch. 3, L. 2023.

Cross-References

Authority of highway patrol officers to stop vehicles and determine rightful possession of livestock, 44-1-1004.

Powers and duties of county Livestock Protective Committee, 81-6-103.

81-3-204. Seizure of livestock — retention of livestock — sale — disposal of proceeds. (1) All state stock inspectors inspecting any livestock before or after shipment or removal from any county in this state, upon a change of ownership, or at the preslaughter inspection at a licensed slaughterhouse may inspect and seize either at the point of sale, shipment, destination, or slaughter or en route any livestock or proceeds from livestock that the inspector believes are stolen or upon which brands have been altered or obliterated or that does not conform to the description contained on the tally sheet furnished by the shipper or to the description contained in any certificate of inspection or release issued before shipment or removal of the livestock.

(2) Upon taking possession of livestock under this section, a state stock inspector may retain the livestock in the inspector's possession for 15 days to make further investigation relative to its ownership. A state stock inspector may either at once or at any time within 15 days sell the livestock at a licensed livestock market or in the open market for the best available price and remit the proceeds, less the cost of keeping and sale, to the department together with a full description of the livestock sold, giving marks and brands, if any, and a statement of the reason for the seizure and sale. The proceeds must be deposited by the department with the state treasurer and credited to the department fund, where it is subject to claim by the owner of the livestock in the same manner and for the same length of time as is provided by law for the making of claims for moneys arising from the sale of stray stock.

History: **En. Sec. 3, Ch. 59, L. 1943; amd. Sec. 108, Ch. 147, L. 1963; amd. Sec. 3, Ch. 149, L. 1971; amd. Sec. 3, Ch. 247, L. 1973; amd. Sec. 107, Ch. 310, L. 1974; amd. Sec. 3, Ch. 482, L. 1977; R.C.M. 1947, 46-803; amd. Sec. 2, Ch. 235, L. 1979; amd. Sec. 2640, Ch. 56, L. 2009.**

Cross-References

Search and seizure, Art. II, sec. 11, Mont. Const.; Title 46, ch. 5.

81-3-205. Fees for inspection and livestock transportation permits. (1) For the service of inspection of all livestock except horses, mules, or asses before removal from a county or before change of ownership, the inspector making the inspections must receive a fee established by the department for each head inspected. For the issuance of a market consignment permit or transportation permit, other than a permanent permit, before removal from a county for all livestock, the inspector issuing the permits must receive a fee established by the department for each permit issued and must receive in addition the inspector's necessary actual expenses, to be paid by the owner or the person for whom the inspection is made or permit issued. For the issuance of a permanent horse transportation permit, the state stock inspector taking the application for permit shall receive a fee established by the department for each permit issued. All inspection and permit fees and expenses must be collected by the inspector at the time of inspection or issuance of permit, all the fees and expenses collected by a deputy state stock inspector must be retained by the deputy, and all fees and expenses collected by a state stock inspector must be sent by the inspector to the department for deposit in the state treasury to the credit of the state special revenue fund for the use of the department.

(2) For the service of inspection before any livestock except a horse, mule, or ass is sold or offered for sale at a licensed livestock market or slaughtered at a licensed slaughterhouse, a state stock inspector or deputy state stock inspector making the inspection must receive a fee established by the department for each head inspected. All fees must be paid by the owner or by the person for whom the inspection is made. For releasing an animal so that it may be removed from the premises of a licensed livestock market, the state stock inspector making the release must receive a fee established by the department for each head inspected from the owner or the person for whom the release is made. All fees for inspection and release at the market must be collected at the time the inspection or release is made by the state stock inspector making the inspection or release and must be sent by the inspector to the department for deposit in the state treasury to the credit of the state special revenue fund for the use of the department. All fees for preslaughter inspection made at a licensed slaughterhouse by the state stock inspector must be paid to the department for deposit in the state treasury to the credit of the state special revenue fund for the use of the department. Preslaughter inspection fees paid to a deputy state stock inspector must be retained by the deputy.

(3) (a) For the service of inspection of horses, mules, or asses before removal from a county or before change of ownership, the inspector making the inspection must receive a

fee established by the department for each head inspected and must receive in addition the inspector's necessary actual expenses, to be paid by the owner or the person for whom the inspection is made. All fees and expenses collected by a state stock inspector must be sent by the inspector to the department for deposit in the state treasury to the credit of the state special revenue fund for the use of the department.

(b) For the service of inspection before a horse, mule, or ass is sold or offered for sale at a licensed livestock market, a state stock inspector making the inspection must receive a fee established by the department for each head inspected. All fees must be paid by the owner or the person for whom the inspection is made to the state stock inspector.

(4) All inspection and release fees and expenses must be paid to the department for deposit in the state treasury to the credit of the state special revenue fund for the use of the department unless paid to a deputy state stock inspector. State stock inspectors must be paid for their services and receive their expenses as fixed by the department.

History: En. Sec. 4, Ch. 59, L. 1943; amd. Sec. 1, Ch. 106, L. 1949; amd. Sec. 3, Ch. 184, L. 1953; amd. Sec. 3, Ch. 142, L. 1957; amd. Sec. 93, Ch. 147, L. 1963; amd. Sec. 4, Ch. 149, L. 1971; amd. Sec. 4, Ch. 247, L. 1973; amd. Sec. 108, Ch. 310, L. 1974; amd. Sec. 4, Ch. 482, L. 1977; R.C.M. 1947, 46-804; amd. Sec. 3, Ch. 235, L. 1979; amd. Sec. 2, Ch. 298, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 8, Ch. 444, L. 1983; amd. Sec. 4, Ch. 166, L. 1989; amd. Sec. 2641, Ch. 56, L. 2009.

81-3-206. Commissioners to designate places for loading livestock for inspection. The board of county commissioners must, at the request of the department, designate within their respective counties certain convenient places and provide suitable facilities for unloading and loading of livestock for inspection purposes.

History: En. Sec. 1, Ch. 74, L. 1939; amd. Sec. 1, Ch. 211, L. 1947; amd. Sec. 101, Ch. 310, L. 1974; R.C.M. 1947, 46-709.

81-3-207 through 81-3-209 reserved.

81-3-210. Bill of sale required to prove ownership. (1) A bill of sale signed by the seller and adequately describing the livestock sold must be presented to the livestock inspector whenever the change of ownership inspection required by 81-3-211 is made or whenever a buyer of livestock requests a county-line or state-line inspection for livestock. The bill of sale shall be in a form prescribed by the department and shall be taken up by the department with the certificate of inspection acting as a receipt.

(2) The department shall establish, charge, and receive a fee for each copy of a bill of sale requested after the original bill of sale has been taken up. Fees so received shall be paid to the department for deposit in the state treasury to the credit of the state special revenue fund for the use of the department.

History: En. Sec. 1, Ch. 80, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 9, Ch. 444, L. 1983.

81-3-211. Inspection of livestock before change of ownership or removal from county — transportation permits. (1) For the purposes of this section:

(a) "Family business entity" means:

(i) a corporation whose stock is owned solely by members of the same family;

(ii) a partnership in which the partners are all members of the same family;

(iii) an association whose members are all members of the same family; or

(iv) any other entity owned solely by members of the same family.

(b) "Members of the same family" means a group whose membership is determined by including an individual, the individual's spouse, and the individual's parents, children, and grandchildren, and the spouses of each.

(c) "Rodeo producer" means a person who produces or furnishes livestock that are used for rodeo purposes.

(2) Except as otherwise provided in this part, it is unlawful to remove or cause to be removed from a county in this state any livestock or to transfer ownership by sale or otherwise or for an intended purchaser or a purchaser's agent to take possession of any livestock subject to title passing upon meeting or satisfaction of any conditions, unless the livestock have been inspected for brands by a state stock inspector or deputy state stock inspector and a certificate of the inspection has been issued in connection with and for the purpose of the transportation or removal or of the change of ownership as provided in this part. The inspection must be made in daylight. However, the change of ownership inspection requirements of this subsection do not

apply when the change of ownership transaction is accomplished without the livestock changing premises, involves part of a herd to which livestock have not been added other than by natural increase or after brand inspection, and is between:

(a) members of the same family;

(b) a member of one family and the same family's business entity; or

(c) the same family's business entities.

(3) (a) It is unlawful to sell or offer for sale at a livestock market any livestock originating within any county in this state in which a livestock market is maintained or transported under a market consignment permit until the livestock have been inspected for marks and brands by a state stock inspector, as provided in this part.

(b) It is unlawful to slaughter livestock at a licensed livestock slaughterhouse unless the livestock have been inspected for marks or brands by a state or deputy state stock inspector.

(4) It is unlawful to remove or cause to be removed any livestock from the premises of a livestock market in this state unless the livestock have been released by a state stock inspector and a certificate of release for the livestock has been issued in connection with and for the purpose of the removal from the premises of the livestock market. The release obtained pursuant to this subsection permits the movement of the released livestock directly to the destination shown on the certificate.

(5) The person in charge of livestock being removed from a county in this state, when inspection is required by this section, when a change of ownership has occurred, or when moved under a market consignment permit or a market release certificate, must have in the person's possession the certificate of inspection, market consignment permit, transportation permit, or market release certificate and shall exhibit the certificate to any sheriff, deputy sheriff, constable, highway patrol officer, state stock inspector, or deputy state stock inspector on request. For travel and transportation purposes only, a person may satisfy the requirements of this section by possessing and exhibiting a digital copy of the required documentation. Section 81-3-204 must be extended to livestock transported or sold under the permits.

(6) The following transportation permits may be issued:

(a) If a saddle, work, or show horse is being transported from county to county in this state by the owner for the owner's personal use or business or if cattle are being transported from county to county in this state by their owner for show purposes and there is no change of ownership, the inspection certificate required by this section may be endorsed, as to the purpose and extent of transportation, by the inspector issuing the certificate in order to serve as a travel permit in this state for a period not to exceed 1 year for the horse or cattle described in the certificate. The permit becomes void upon any transfer of ownership or if the horse or cattle are to be removed from the state. If the permit is void, an inspection must be secured for removal and the endorsed certificate must be surrendered.

(b) The owner of a saddle, work, or show horse may apply for a permanent transportation permit valid for both interstate and intrastate transportation of the horse until there is a change of ownership. The horse must have either a registered brand that has been legally cleared or a lip tattoo or the owner is required to present proof of ownership to a state stock inspector or a specially qualified deputy stock inspector. A written application, on forms to be provided by the department, must be completed by the owner and presented to a state stock inspector or a specially qualified deputy stock inspector, together with a permit fee established by the department, for each horse. The application must contain a thorough physical description of the horse and list all brands and tattoos carried by the horse. Upon approval of the application by a state stock inspector, a permanent transportation permit must be issued by the department to the owner for each horse, and the permit is valid for the life of the horse. If there is a change in ownership of a horse, the permit automatically is void. The permit must accompany the horse for which it was issued at all times while the horse is in transit. This permit is in lieu of other permits and certificates required under the provisions of this section. The state of Montana shall recognize as valid permanent transportation permits issued in other jurisdictions to the owner of a saddle, work, or show horse subsequently entering the state. A permit is automatically void upon a change of ownership.

(c) When livestock owned by and bearing the registered brand of a bona fide rodeo producer are being transported from county to county in this state by the owner for rodeo purposes and

there is no change of ownership, the inspection certificate required by this section may be endorsed, as to the purpose and extent of transportation, by the inspector issuing the certificate in order to serve as a travel permit in this state for the livestock described in the certificate. The certificate is effective for the calendar year for which it is issued. The certificate must be issued by a state stock inspector.

(d) The owner of a bull bearing the registered brand of a bona fide rodeo producer may apply for a permanent transportation permit valid for both interstate and intrastate transportation of the bull until there is a change of ownership. The bull must have a registered brand that has been legally cleared and a legible number brand on the shoulder or hip used for individual identification, or the owner is required to present proof of ownership to a state stock inspector or a specially qualified deputy stock inspector. A written application, on forms to be provided by the department, must be completed by the owner and presented to a state stock inspector or a specially qualified deputy stock inspector, together with a permit fee established by the department, for each bull. The application must contain a thorough physical description of the bull and list all brands and tattoos carried by the bull. Upon approval of the application by a state stock inspector, a permanent transportation permit must be issued by the department to the owner for each bull, and the permit is valid for the life of the bull. If there is a change in ownership of a bull, the permit automatically is void. The permit must accompany the bull for which it was issued at all times while the bull is in transit. This permit is in lieu of other permits and certificates required under the provisions of this section. The state of Montana shall recognize as valid permanent transportation permits issued in other jurisdictions to the owner of a rodeo bull subsequently entering the state. A permit is automatically void upon a change of ownership.

(e) (i) An owner of livestock or the owner's agent may be issued one transportation permit in a 12-month period allowing the movement of the livestock and return when the livestock are being moved for grazing purposes and when they are being moved to and from land owned or controlled by the owner of the livestock or the owner's agent:

(A) into an adjoining county; or

(B) across multiple county lines if the entire grazing range is the privately deeded property of the livestock owner.

(ii) The permit is valid for a period of 8 months from the date of issuance and must be issued by a state stock inspector.

(iii) The permit may be issued only if the livestock are branded with the permittee's brand, which must be registered in Montana, unless the animal is classified as a virgin breeding female or a nursing calf.

(iv) The department shall establish a fee for the permit, to be paid to the state stock inspector at the time the permit is issued and remitted by the inspector to the department for deposit in the state treasury to the credit of the state special revenue fund for the use of the department. This permit may be used in lieu of the inspection and certificate required by this section for movement of livestock across a county line.

(7) Before any removal or change of ownership may take place, the seller of livestock shall request all required inspections and shall pay the required fees.

History: En. Sec. 1, Ch. 59, L. 1943; amd. Sec. 1, Ch. 176, L. 1945; amd. Sec. 1, Ch. 210, L. 1947; amd. Sec. 1, Ch. 110, L. 1949; amd. Sec. 1, Ch. 184, L. 1953; amd. Sec. 1, Ch. 142, L. 1957; amd. Sec. 1, Ch. 9, L. 1961; amd. Sec. 1, Ch. 54, L. 1969; amd. Sec. 1, Ch. 149, L. 1971; amd. Sec. 1, Ch. 247, L. 1973; Sec. 46-801, R.C.M. 1947; amd. and redes. 46-801.2 by Sec. 102, Ch. 310, L. 1974; amd. Sec. 1, Ch. 316, L. 1975; amd. Sec. 1, Ch. 312, L. 1977; amd. Sec. 1, Ch. 482, L. 1977; R.C.M. 1947, 46-801.2; amd. Sec. 1, Ch. 190, L. 1979; amd. Sec. 4, Ch. 235, L. 1979; amd. Sec. 1, Ch. 10, L. 1981; amd. Sec. 1, Ch. 364, L. 1981; amd. Sec. 1, Ch. 17, L. 1983; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 10, Ch. 444, L. 1983; amd. Sec. 5, Ch. 166, L. 1989; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 1, Ch. 380, L. 1995; amd. Sec. 2, Ch. 376, L. 1997; amd. Sec. 2, Ch. 290, L. 2009; amd. Sec. 2, Ch. 120, L. 2017; amd. Sec. 1, Ch. 220, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 220, L. 2025. Amendment effective April 17, 2025.

81-3-212. Exceptions. Section 81-3-211 does not apply to livestock:

(1) being transported through the state in interstate commerce without leaving the custody of the carrier;

(2) when driven on the hoof and not moved by means of any motor vehicle, trailer, horse-drawn vehicle, or boat by the owner from one county to an adjoining county within the state onto land owned or controlled by the owner of livestock so moved for the purpose of pasturing, feeding, or changing the range thereof;

(3) when driven on the hoof or moved by means of a motor vehicle, trailer, horse-drawn vehicle, or boat by the owner from one county to an adjoining county within this state onto land owned or controlled by the owner of livestock without leaving land owned or controlled by the owner when moved for the purpose of pasturing, feeding, or changing the range thereof;

(4) when driven on the hoof from one county to an adjoining county within this state for the purpose of delivery to a licensed public market by a person who has been the owner of that livestock for a period of at least 3 months;

(5) from one county to be consigned to, and which actually reaches, a licensed livestock market located in another county of the state at which the department regularly maintains a stock inspector and for which a market consignment permit has been obtained in a manner provided by law;

(6) being transported to a veterinarian for health treatment and returned to their original premises if certification of treatment by the attending veterinarian accompanies the livestock on their return.

History: En. 46-801.3 by Sec. 104, Ch. 310, L. 1974; R.C.M. 1947, 46-801.3; amd. Sec. 6, Ch. 166, L. 1989.

81-3-213. Inspection of livestock removed from state. Except as provided for in 81-3-212(1) and 81-3-211(4) and (6)(b), nothing contained in this part authorizes or permits a person to remove or cause to be removed livestock from this state to a location outside of this state unless the livestock has been inspected for brands by a state stock inspector or deputy state stock inspector and a certificate for the inspection has been issued in connection with and for the purpose of the transportation or removal as provided in this part.

History: En. 46-801.4 by Sec. 105, Ch. 310, L. 1974; amd. Sec. 2, Ch. 482, L. 1977; R.C.M. 1947, 46-801.4; amd. Sec. 5, Ch. 235, L. 1979; amd. Sec. 7, Ch. 166, L. 1989.

81-3-214. Repealed. Sec. 1, Ch. 23, L. 2009.

History: En. 46-801.5 by Sec. 2, Ch. 41, L. 1977; R.C.M. 1947, 46-801.5; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 11, Ch. 444, L. 1983; amd. Sec. 8, Ch. 166, L. 1989.

81-3-215. Repealed. Sec. 1, Ch. 221, L. 2025.

History: En. Sec. 2, Ch. 32, L. 1974; R.C.M. 1947, 46-239.2.

81-3-216. Repealed. Sec. 29, Ch. 444, L. 1983.

History: En. Sec. 1, Ch. 162, L. 1979.

81-3-217 through 81-3-220 reserved.

81-3-221. Brands fraudulently changed. Whenever a mark or brand upon any neat cattle, horse, or other animal has been fraudulently altered, obliterated, or defaced so that the original mark or brand cannot be determined through the external inspection thereof, any stock inspector or sheriff may seize and kill the animal to ascertain the mark or brand so altered or defaced. Payment equal to the fair market value of the live animal shall be made after proper ownership is determined.

History: En. Sec. 2974, Pol. C. 1895; re-en. Sec. 1801, Rev. C. 1907; re-en. Sec. 3314, R.C.M. 1921; re-en. Sec. 3314, R.C.M. 1935; amd. Sec. 1, Ch. 15, L. 1977; R.C.M. 1947, 46-706.

81-3-222. Compensation for animals killed. The value of the animal taken and killed shall be determined by three disinterested parties living in the vicinity where the animal is seized. The amount of money awarded to the owner is full compensation for the loss of the animal. All money disbursed under this section shall be paid out of the department's funds in the state special revenue fund, and whenever possible the dead bodies of the animals killed shall be disposed of for cash and the proceeds turned into the fund.

History: En. Sec. 2975, Pol. C. 1895; re-en. Sec. 1802, Rev. C. 1907; re-en. Sec. 3315, R.C.M. 1921; re-en. Sec. 3315, R.C.M. 1935; amd. Sec. 92, Ch. 147, L. 1963; amd. Sec. 100, Ch. 310, L. 1974; R.C.M. 1947, 46-707; amd. Sec. 1, Ch. 277, L. 1983.

81-3-223. Action by dissatisfied owner — costs. If the owner of the animal seized and killed under this part is dissatisfied with the valuation made, the owner may maintain an action against the department or, if the animal is seized by a sheriff, against that sheriff's county, and if the owner fails to recover damages in any greater amount than that allowed under 81-3-222, the owner shall bear all costs that may be incurred in the maintenance of the action.

History: En. Sec. 2976, Pol. C. 1895; re-en. Sec. 1803, Rev. C. 1907; re-en. Sec. 3316, R.C.M. 1921; re-en. Sec. 3316, R.C.M. 1935; amd. Sec. 2, Ch. 15, L. 1977; R.C.M. 1947, 46-708; amd. Sec. 2643, Ch. 56, L. 2009.

81-3-224 through 81-3-230 reserved.

81-3-231. Penalties. (1) A person is guilty of a misdemeanor and is punishable as provided in subsection (5) if the person removes livestock or causes livestock to be removed from a county in this state:

(a) without having the livestock inspected before removal if an inspection is required by law;

(b) without obtaining a market consignment permit or transportation permit if the permits are required by law;

(c) after obtaining a market consignment permit for livestock but does not deliver the livestock transported under the permit to the livestock market designated in the market consignment permit;

(d) after obtaining a transportation permit for the livestock but does not deliver the livestock transported under the permit to the destination as shown on the transportation permit and fails to have the transported livestock inspected at the point of destination.

(2) A person who sells livestock or offers livestock for sale at a livestock market without having the livestock inspected or who removes livestock or causes livestock to be removed from a livestock market without obtaining a release is guilty of a misdemeanor and is punishable as provided in subsection (5).

(3) A person who has charge of livestock being removed from a county in the state for which an inspection certificate, a market consignment permit, a transportation permit, or a market release certificate has been issued and who fails to have in the person's possession when accompanying the livestock the inspection certificate, market consignment permit, transportation permit, or market release certificate as issued for the livestock or who, having the certificate of inspection, market consignment permit, transportation permit, or market release certificate, fails to exhibit it to a sheriff, deputy sheriff, constable, highway patrol officer, state stock inspector, or deputy state stock inspector upon request is guilty of a misdemeanor and is punishable as provided in subsection (5).

(4) Except as specifically otherwise provided, a person violating any of the provisions of this part is guilty of a misdemeanor and is punishable as provided in subsection (5).

(5) Upon conviction under this section, a person, firm, association, or corporation shall be fined not less than $50 or more than $500 or imprisoned in the county jail for a period of not more than 6 months, or both. Of all fines assessed and collected under this section, except those assessed and collected in a justice's court, 50% must be paid into the state treasury and credited to the state special revenue fund for the use of the department and 50% must be paid into the general fund of the county in which the conviction occurred.

History: En. Sec. 6, Ch. 59, L. 1943; amd. Sec. 4, Ch. 184, L. 1953; amd. Sec. 4, Ch. 142, L. 1957; amd. Sec. 94, Ch. 147, L. 1963; amd. Sec. 109, Ch. 310, L. 1974; amd. Sec. 5, Ch. 482, L. 1977; R.C.M. 1947, 46-806; amd. Sec. 2, Ch. 14, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 9, L. 1985; amd. Sec. 53, Ch. 557, L. 1987; amd. Sec. 9, Ch. 166, L. 1989; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 2644, Ch. 56, L. 2009.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

81-3-232. Repealed. Sec. 1, Ch. 221, L. 2025.

History: En. Sec. 3, Ch. 32, L. 1974; R.C.M. 1947, 46-239.3.

81-3-233. Penalty for removal of livestock from state without inspection — exception. A person, other than the owner or the owner's agent or employee, who, without consent of the owner, removes or causes to be removed from this state any cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal, or filly without having the animal inspected when inspection is required by law is guilty of a felony and shall be punished by a fine of not more than $2,000, by imprisonment in the state prison for a term of not more than 3 years, or

by both. The provisions of this section do not apply to a person who removes from this state an animal specified by this section for the purpose of obtaining emergency treatment for the animal by a licensed veterinarian.

History: En. Sec. 1, Ch. 173, L. 1961; amd. Sec. 28, Ch. 12, L. 1977; R.C.M. 1947, 46-808; amd. Sec. 2645, Ch. 56, L. 2009.

CHAPTER 4
CONTAINMENT OF LIVESTOCK

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Part 1
Fences

81-4-101. Legal fences defined. Except as provided in subsections (2) and (7), a legal fence must be at least 42 inches but not more than 48 inches in height. The following are legal fences in Montana:

(1) fences constructed of at least three barbed, horizontal, well-stretched wires, the lowest of which is not less than 15 inches or more than 18 inches from the ground, securely fastened as nearly equidistant as possible to substantial posts firmly set in the ground or to well-supported leaning posts not exceeding 20 feet apart or 33 feet apart where two or more stays or pickets are used equidistant between posts;

(2) (a) corral fences that are used exclusively for the purposes of enclosing stacks situated outside of any lawful enclosure and that:

(i) are not less than 16 feet from the enclosed stack;

(ii) are substantially built with posts not more than 8 feet distant from each other; and

(iii) consist of at least five strands of well-stretched barbed wire not less than 5 or more than 6 feet high;

(b) a fence as effectual for the purpose of a corral fence as the type described in subsection (2)(a);

(3) fences constructed of any standard woven wire, securely fastened to substantial posts not more than 30 feet apart, with two equidistant barbed wires placed above the woven wire;

(4) other fences made of barbed wire, which must be as strong and as well calculated to protect enclosures as those in subsections (1) through (3);

(5) fences consisting of four boards, rails, or poles with standing or leaning posts not over 17 feet and 6 inches apart and, if leaning posts are used, a pole or wire fastened securely on the inside of the leg or support of each leaning post;

(6) electric fences that:

(a) consist of at least three tightly stretched strands of at least 12.5 gauge, high-tensile steel or its equivalent;

(b) are strung by sufficient posts set firmly in the ground not more than an average distance of 50 feet apart along the full span;

(c) are charged with a standard charger with an output of at least 0.5 joule and with sufficient energy for the entirety of the fence; and

(d) are regularly maintained by the fence owner to ensure the fence is operable;

(7) rivers, hedges, mountain ridges and bluffs, or other barriers over or through which it is impossible for stock to pass; and

(8) any legal fence listed in subsections (1) through (5) or (7) that also includes at least one strand of electrified wire.

History: En. Sec. 1, p. 46, L. 1881; amd. Sec. 1, p. 76, L. 1885; amd. Sec. 1111, 5th Div. Comp. Stat. 1887; amd. Sec. 3250, Pol. C. 1895; amd. Sec. 1, p. 139, L. 1901; amd. Sec. 1, Ch. 37, L. 1905; amd. Sec. 1, Ch. 64, L. 1913; amd. Sec. 1, Ch. 163, L. 1919; re-en. Sec. 3374, R.C.M. 1921; re-en. Sec. 3374, R.C.M. 1935; R.C.M. 1947, 46-1401; amd. Sec. 2, Ch. 249, L. 2015; amd. Sec. 1, Ch. 135, L. 2017.

Cross-References

Regulation of stable location, 7-21-4204.
Fencing for livestock control and public passage — negotiation — costs, 23-2-313.
Failure to close gates — criminal mischief, 45-6-101.
Mutual obligation of adjoining landowners, 70-16-205.
Fence-out requirement, 76-16-322.
Liability of stockowners for trespass, 81-4-215.

81-4-102. Construction of auto pass not to deprive legal fence of character. There may be maintained in a legal fence a pass so constructed that automobiles and trucks may pass over the same and which will prevent the passage of livestock across said opening without depriving such fence of the character of a legal fence under the laws of this state.

History: En. Sec. 3, Ch. 153, L. 1933; re-en. Sec. 4486.3, R.C.M. 1935; R.C.M. 1947, 16-1129.

81-4-103. Civil liability. Any person constructing or maintaining any fence of any kind not described in 81-4-101 is liable in a civil action for all damages caused by reason of injury to stock resulting from such defective fence.

History: En. Secs. 1112 to 1120, 5th Div. Comp. Stat. 1887; re-en. Sec. 3251, Pol. C. 1895; re-en. Sec. 2083, Rev. C. 1907; re-en. Sec. 3375, R.C.M. 1921; re-en. Sec. 3375, R.C.M. 1935; R.C.M. 1947, 46-1402.

81-4-104. Barbed wire fences to be kept in repair. The owners of barbed wire fences shall keep the same in repair, and a person who receives notice in writing that the person's barbed wire fence or any part of the fence is down or in such condition as to be likely to injure any livestock and who fails or refuses to repair the fence is liable to pay damages in an amount equal to the value of any cattle, horses, mules, or other domestic animals that may be injured by coming into contact with the fence.

History: En. Secs. 1112 to 1120, 5th Div. Comp. Stat. 1887; re-en. Sec. 3252, Pol. C. 1895; re-en. Sec. 2084, Rev. C. 1907; re-en. Sec. 3376, R.C.M. 1921; re-en. Sec. 3376, R.C.M. 1935; R.C.M. 1947, 46-1403; amd. Sec. 2646, Ch. 56, L. 2009.

81-4-105. Fallen wire fencing declared nuisance — abatement. All barbed wire and other wire fencing which has sagged or fallen to the ground so as to be ineffectual for the purpose of turning stock and a menace to any person riding or walking over the same is declared to be a public nuisance and subject to abatement in the manner hereinafter provided.

History: En. Sec. 1, Ch. 84, L. 1927; re-en. Sec. 3376.1, R.C.M. 1935; R.C.M. 1947, 46-1404.

Cross-References

Public nuisances, Title 27, ch. 30, part 2.
Action to abate public nuisance, 45-8-112.

81-4-106. Notice to owner to repair fence — duty of county commissioners. Upon ascertaining the existence in the county of any nuisance specified in 81-4-105, the board of county commissioners shall notify by registered or certified mail the owner of such wire, if such owner be known to said board and within the state, to remove same. If such owner shall fail

to remove said wire or to rebuild said fence within 60 days following receipt of said notice, the board of county commissioners shall have authority to remove and dispose of said wire in the manner provided by 81-4-107.

History: En. Sec. 2, Ch. 84, L. 1927; re-en. Sec. 3376.2, R.C.M. 1935; R.C.M. 1947, 46-1405.

81-4-107. Procedure when owner unknown or not resident of state — sale of wire removed. If there is no known owner of such wire within the state or if such owner is unknown to the board of county commissioners, the board may collect and remove the wire at the expense of the county. All such wire or other fencing as in the opinion of the board of county commissioners can be sold at a price sufficient to cover at least the expense of removal and sale shall be sold by the county commissioners in the manner provided by law for the sale of county property, except that notice of such sale need be published only once and need be given only 10 days before such sale.

History: En. Sec. 3, Ch. 84, L. 1927; re-en. Sec. 3376.3, R.C.M. 1935; amd. Sec. 50, Ch. 12, L. 1977; R.C.M. 1947, 46-1406.

Cross-References

Manner of sale of county property, Title 7, ch. 8, part 22.

81-4-108. Disposal of proceeds of sale of wire after payment of expense. The proceeds of a sale under 81-4-107 must be used to defray the cost of collecting and selling the wire, and the balance, if any, must be placed by the county treasurer in a special fund and must be held subject to claim by any person establishing to the satisfaction of the board of county commissioners that the person was the lawful owner of the wire and entitled to the remaining proceeds of the sale. If a person does not claim the money within 1 year of the date of sale, the money must be deposited in the general fund of the county.

History: En. Sec. 4, Ch. 84, L. 1927; re-en. Sec. 3376.4, R.C.M. 1935; R.C.M. 1947, 46-1407; amd. Sec. 2647, Ch. 56, L. 2009.

Part 2
Animals Unlawfully Running at Large

Part Cross-References

Grazing of livestock on highways, Title 60, ch. 7, part 2.

81-4-201. Animals running at large. It is unlawful for an owner or person in control of swine, sheep, llamas, alpacas, bison, ostriches, rheas, emus, or goats to willfully permit the animals to run at large.

History: En. Sec. 1165, Pen. C. 1895; re-en. Sec. 8838, Rev. C. 1907; re-en. Sec. 3393, R.C.M. 1921; re-en. Sec. 3393, R.C.M. 1935; amd. Sec. 1, Ch. 169, L. 1945; R.C.M. 1947, 46-1704; amd. Sec. 10, Ch. 166, L. 1989; amd. Sec. 5, Ch. 417, L. 1993; amd. Sec. 9, Ch. 206, L. 1995.

81-4-202. Penalties. (1) Any person violating 81-4-201 is guilty of a misdemeanor and upon conviction shall be fined not more than $500 and is liable for damages to any party injured by the violation, in any court having competent jurisdiction.

(2) All fines collected under the provisions of this section, except those collected in a justice's court, must be paid into the county treasury for the use and benefit of the public schools.

History: (1)En. Sec. 1166, Pen. C. 1895; re-en. Sec. 8839, Rev. C. 1907; re-en. Sec. 3394, R.C.M. 1921; re-en. Sec. 3394, R.C.M. 1935; Sec. 46-1705, R.C.M. 1947; (2)En. Sec. 1167, Pen. C. 1895; re-en. Sec. 8840, Rev. C. 1907; re-en. Sec. 3395, R.C.M. 1921; re-en. Sec. 3395, R.C.M. 1935; Sec. 46-1706, R.C.M. 1947; R.C.M. 1947, 46-1705, 46-1706; amd. Sec. 54, Ch. 557, L. 1987; amd. Sec. 1, Ch. 8, L. 1993.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

81-4-203. Open range defined. In 81-4-204 and 81-4-207, the term "open range" means all lands in the state of Montana not enclosed by a fence of not less than two wires in good repair. The term "open range" includes all highways outside of private enclosures and used by the public whether or not the same have been formally dedicated to the public.

History: En. Sec. 1, Ch. 63, L. 1925; amd. Sec. 1, Ch. 85, L. 1931; re-en. Sec. 3400.1, R.C.M. 1935; R.C.M. 1947, 46-1707(part); amd. Sec. 1, Ch. 679, L. 2023.

Cross-References

Fencing of open range, Title 60, ch. 7, part 1.

81-4-204. Male equine animals not to run on open range. It shall be unlawful for any owner, person, firm, corporation, or association having the management or control of any stallion, ridgeling, unaltered male mule, or jackass over the age of 1 year to permit or suffer such animal to run at large on the open range.

History: En. Sec. 1, Ch. 63, L. 1925; amd. Sec. 1, Ch. 85, L. 1931; re-en. Sec. 3400.1, R.C.M. 1935; R.C.M. 1947, 46-1707(part).

81-4-205. Male equine animals running at large as nuisance — abatement. Any such animal so running at large is a public nuisance, which, in addition to the means and proceedings prescribed by this part for its abatement and removal, may be abated and removed by the means and proceedings provided by law for the abatement or removal of public nuisances.

History: En. Sec. 2, Ch. 63, L. 1925; amd. Sec. 2, Ch. 85, L. 1931; re-en. Sec. 3400.2, R.C.M. 1935; amd. Sec. 52, Ch. 12, L. 1977; R.C.M. 1947, 46-1708.

Cross-References

Public nuisances, Title 27, ch. 30, part 2.

Procedure for abatement and removal of public nuisances, 45-8-112.

81-4-206. Killing animal to prevent injury not prohibited. Sections 81-4-203 through 81-4-209 are not intended and shall not be interpreted or understood to limit or deny the right now existing to destroy or kill any such animal to prevent injury by it to any person or property.

History: En. Sec. 5, Ch. 63, L. 1925; amd. Sec. 5, Ch. 85, L. 1931; re-en. Sec. 3400.5, R.C.M. 1935; R.C.M. 1947, 46-1711.

81-4-207. Castration of animals running at large — notice to owner — expense and charges. (1) Except as provided in subsection (3), a person may take up and secure any animal found running at large on the open range. After taking it up the person shall, without unnecessary delay, post at the United States post office or as near as may be to the place where the animal was taken up a notice truly dated and subscribed by the person or the person's agent to the effect that the animal, describing it by marks and brands, if any, color, and sex, was taken up on the day named while it was running at large on the open range in the county, naming the county, and that, unless claimed and removed within 5 days after the date of the posting, the animal will be castrated at the expense of the owner. If the owner, person, firm, corporation, or association having management or control of the animal is known to the person who took the animal up, personal service of the notice upon the owner, person, firm, corporation, or association having management or control of the animal is the equivalent to the posting. The notice, if personally served, may state that, unless the animal is claimed and removed within 2 days after the date of the notice served personally, the animal will be castrated at the expense of the owner.

(2) If the animal taken up is not claimed and removed within 5 days or 2 days, as the case may be, it may lawfully be castrated in the usual manner and doing no more harm than is necessary. The expense of castration must be paid by the owner. If the animal is claimed within the time prescribed, the claimant shall pay to the person who took the animal up the reasonable expense of keeping and feeding the animal since it was taken up and also the sum of $5 for the taking up and giving of the notice. Upon making the payments, the claimant shall immediately remove and take away the animal.

(3) A person shall report a swine running at large on the open range to the board. The board shall determine if the swine is an animal running at large subject to this section or a feral swine subject to the provisions of Title 81, chapter 29, part 1.

History: En. Sec. 3, Ch. 63, L. 1925; amd. Sec. 3, Ch. 85, L. 1931; re-en. Sec. 3400.3, R.C.M. 1935; R.C.M. 1947, 46-1709; amd. Sec. 2648, Ch. 56, L. 2009; amd. Sec. 7, Ch. 429, L. 2015.

81-4-208. Killing of animal running at large. (1) Except as provided in subsection (2), if an animal running at large cannot, by reasonable effort, be captured, taken up, or corralled, it may lawfully be killed unless the owner or person having the management or control of the animal restrains it from running at large within 3 days after notice is given to the owner and the department of livestock by written, verbal, or electronic means.

(2) A person shall report a swine running at large to the board. The board shall determine if the swine is an animal running at large subject to this section or a feral swine subject to the provisions of Title 81, chapter 29, part 1.

History: En. Sec. 4, Ch. 63, L. 1925; amd. Sec. 4, Ch. 85, L. 1931; re-en. Sec. 3400.4, R.C.M. 1935; R.C.M. 1947, 46-1710; amd. Sec. 2649, Ch. 56, L. 2009; amd. Sec. 8, Ch. 429, L. 2015; amd. Sec. 2, Ch. 679, L. 2023.

81-4-209. Penalty for violations. An owner, person, firm, corporation, or association violating any provisions of 81-4-203 through 81-4-209 shall be guilty of a misdemeanor punishable as provided in 46-18-212.

History: En. Sec. 6, Ch. 63, L. 1925; amd. Sec. 6, Ch. 85, L. 1931; re-en. Sec. 3400.6, R.C.M. 1935; R.C.M. 1947, 46-1712; amd. Sec. 1, Ch. 92, L. 1995.

81-4-210. Only purebred bulls to run at large — limitation on time. It shall be unlawful for any person or persons, firm, company, or corporation to turn upon or allow to run at large on the public highways, open range, or national forest reserve within the state of Montana any bull other than a purebred bull of a recognized beef type; and no bull shall be turned upon or allowed to run at large upon any such public highways, open range, or national forest reserve between December 1 and June 1 of each and every year.

History: En. Sec. 1, Ch. 62, L. 1917; amd. Sec. 1, Ch. 42, L. 1919; re-en. Sec. 3403, R.C.M. 1921; amd. Sec. 1, Ch. 53, L. 1925; re-en. Sec. 3403, R.C.M. 1935; amd. Sec. 1, Ch. 46, L. 1943; R.C.M. 1947, 46-1716.

81-4-211. Female breeding cattle, purebred bull to accompany. (1) Any person, persons, firm, company, or corporation allowing or permitting female breeding cattle to run at large upon the public ranges or national forest reserves in the state of Montana must place upon the range or national forest reserve one purebred graded bull of a recognized beef type, not less than 15 months or more than 8 years of age, for every 30 head of female breeding cattle pastured upon such range or national forest reserve. Any two or more such users of the public range or national forest reserve may join together in furnishing such bull when the aggregate number of female breeding cattle turned loose upon the same range or national forest reserve by such two or more users thereof does not exceed 30 head.

(2) A purebred bull as contemplated by 81-4-210 through 81-4-213 must be a bull having a registration certificate from the breeding association of its particular breed. A graded bull, as defined in 81-4-210 through 81-4-213, shall be a purebred bull selected by a committee of permittees.

History: En. Sec. 2, Ch. 62, L. 1917; amd. Sec. 1, Ch. 42, L. 1919; re-en. Sec. 3404, R.C.M. 1921; re-en. Sec. 3404, R.C.M. 1935; amd. Sec. 1, Ch. 40, L. 1957; amd. Sec. 53, Ch. 12, L. 1977; R.C.M. 1947, 46-1717.

81-4-212. Castration of violating bulls. A bull found running at large on the open range or national forest reserve in violation of the provisions of 81-4-210 through 81-4-213 may be caught and castrated by any person finding the bull, provided that any purebred dairy bull found running at large may be taken up and the party holding the bull shall notify the owner in person. If the owner of the purebred bull does not take possession of the bull within 24 hours after being notified, the party holding the bull may castrate the bull.

History: En. Sec. 4, Ch. 62, L. 1917; amd. Sec. 1, Ch. 42, L. 1919; re-en. Sec. 3406, R.C.M. 1921; re-en. Sec. 3406, R.C.M. 1935; R.C.M. 1947, 46-1719; amd. Sec. 2650, Ch. 56, L. 2009.

81-4-213. Penalty. Any person or persons, firm, company, or corporation violating any of the provisions of 81-4-210 through 81-4-213 shall be guilty of a misdemeanor punishable as provided in 46-18-212.

History: En. Sec. 3, Ch. 62, L. 1917; amd. Sec. 1, Ch. 42, L. 1919; re-en. Sec. 3405, R.C.M. 1921; re-en. Sec. 3405, R.C.M. 1935; R.C.M. 1947, 46-1718; amd. Sec. 2, Ch. 92, L. 1995.

81-4-214. Branding animals running at large — running irons prohibited. Every person except an owner, and the owner only when branding on the owner's own premises and in the presence of two responsible citizens, who marks or brands any calf or cattle that are running at large between December 1 and May 10 of the next ensuing year and every person who shall at any time brand or cause to be branded or marked any horse, mule, cattle or head of cattle, sheep, llama, alpaca, bison, swine, or other animal, 1 year old or older, with any piece of metal or implement, other than a branding iron, which branding iron must be of the same design as the brand or mark owned by the party using it, or who marks or brands or causes to be marked or branded any of the animals listed in this section with any piece or pieces of iron called "running irons", such as bars, rings, half or quarter circles, is punishable by imprisonment in the county jail for not exceeding 6 months or by a fine of not less than $25 or more than $500, or both.

History: En. Sec. 1189, Pen. C. 1895; re-en. Sec. 8863, Rev. C. 1907; re-en. Sec. 11553, R.C.M. 1921; re-en. Sec. 11553, R.C.M. 1935; Sec. 94-3522, R.C.M. 1947; redes. 46-1720 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 46-1720; amd. Sec. 11, Ch. 166, L. 1989; amd. Sec. 6, Ch. 417, L. 1993.

Cross-References

Illegal branding or altering or obscuring of brand, 45-6-327.

Recording of brands required, 81-3-102.

81-4-215. Liability of owners of stock for trespass. If any cattle, horses, mules, asses, hogs, sheep, llamas, alpacas, bison, or other domestic animals break into any enclosure and the fence of the enclosure is legal, as provided in 81-4-101, the owner of the animals is liable for damages to the owner or occupant of the enclosure if the owner or person in control of the animals was negligent. This section may not be construed to require a legal fence in order to maintain an action for injury done by animals running at large contrary to law. In the case of trespassing animals in a herd district, the liability and damage provisions of 81-4-307 apply.

History: En. Sec. 1119, 5th Div. Comp. Stat. 1887; re-en. Sec. 3258, Pol. C. 1895; re-en. Sec. 2090, Rev. C. 1907; re-en. Sec. 3378, R.C.M. 1921; re-en. Sec. 3378, R.C.M. 1935; amd. Sec. 1, Ch. 199, L. 1977; R.C.M. 1947, 46-1409; amd. Sec. 12, Ch. 166, L. 1989; amd. Sec. 7, Ch. 417, L. 1993; amd. Sec. 1, Ch. 431, L. 2003.

81-4-216. Damage to planted trees. In case of any damage done to planted trees by animals, the owner of the trees may recover damages from the owner of the animals, if said trees are planted inside of a lawful fence or boxed to a height of not less than 5 feet.

History: En. Sec. 3281, Pol. C. 1895; re-en. Sec. 2096, Rev. C. 1907; re-en. Sec. 3377, R.C.M. 1921; re-en. Sec. 3377, R.C.M. 1935; R.C.M. 1947, 46-1408.

81-4-217. Retention of trespassing stock. (1) If an animal breaks into an enclosure surrounded by a legal fence or is wrongfully on the premises of another, the owner or occupant of the enclosure or premises may take into possession the trespassing animal and keep the animal until all damages, together with reasonable charges for keeping and feeding the animal, are paid. The person who takes the animal into possession shall, within 24 hours after taking possession, give written notice to the owner or person in charge of the animal, stating that the animal has been taken. The notice must also give the date of the taking, the description of the animal taken, including marks and brands, if any, the amount of damages claimed, the charge per head per day for caring for and feeding the animal, and the description, either by legal subdivisions or other general description, of the location of the premises on which the animal is held.

(2) The notice must be given to the owner or person in charge only when the owner or person in charge of the animal is known to the person taking the animal and resides within 25 miles of the premises on which the animal was taken. If the owner or person in charge of the animal resides more than 25 miles from the place of the taking, the notice must be mailed to the owner. In this case or if the owner is unknown, a similar notice must be mailed to the department of livestock and the sheriff of the county in which the animal has been taken. On receipt of the notice, the sheriff shall post a copy of the notice at the courthouse and shall send by certified mail a copy of it to the owner of the stock, if known to the sheriff. If unknown, the sheriff shall send a copy of the notice to the nearest state livestock inspector.

(3) If the parties within 5 days after receipt of the notice do not agree to the amount of damages, the claimant shall within 10 days institute a civil action to collect the claim in a court of competent jurisdiction. Pending the outcome of the suit, the person taking the stock may, at the expense of the owner, retain a sufficient number of animals to cover the amount of damages claimed by the person taking the stock. The owner or person in charge of the animal may, after the institution of the action, on filing a bond executed by two or more sureties and approved by the court in double the sum sued for, conditioned upon the payment to the claimant of all sums, including costs that may be recovered by the claimant, have all livestock returned. The claimant is liable to the owner for any loss or injury to the stock occurring through the claimant's fault or neglect. If the claimant fails to recover in the action a sum equal to that offered by the owner of the stock, the claimant bears the expense of keeping and feeding the stock while in the claimant's possession.

(4) A person who takes or rescues an animal from the possession of the person taking the animal, without the consent of the person taking the animal, is guilty of a misdemeanor punishable as provided in 46-18-212.

History: En. Sec. 8, p. 48, L. 1881; re-en. Sec. 1120, 5th Div. Comp. Stat. 1887; re-en. Sec. 3259, Pol. C. 1895; re-en. Sec. 2091, Rev. C. 1907; amd. Sec. 1, Ch. 231, L. 1921; re-en. Sec. 3379, R.C.M. 1921; re-en. Sec. 3379, R.C.M. 1935; amd. Sec. 146, Ch. 310, L. 1974; amd. Sec. 51, Ch. 12, L. 1977; R.C.M. 1947, 46-1410; amd. Sec. 1, Ch. 35, L. 1983; amd. Sec. 3, Ch. 92, L. 1995.

81-4-218. Marking land and mining claims in national forest. It shall be the duty of the owner or the person holding possessory right to all unfenced lands or patented or unpatented mining claims, which said lands or patented or unpatented mining claims lie within the boundary of national forest reserves in the state of Montana or which lie on public ranges adjoining to any national forest reserve, to mark the boundaries thereof by substantial monuments that can be readily seen and observed so that such boundaries can be readily traced.

History: En. Sec. 1, Ch. 222, L. 1921; re-en. Sec. 3380, R.C.M. 1921; re-en. Sec. 3380, R.C.M. 1935; amd. Sec. 1, Ch. 31, L. 1963; R.C.M. 1947, 46-1411.

Cross-References

Manner of locating claim, 82-2-101.

81-4-219. Method of marking. For the purposes of 81-4-218 through 81-4-220, it shall be prima facie evidence that such boundaries are properly marked if the same are defined; provided that such monuments or some tree, stump, or post adjacent thereto shall be conspicuously marked with the name of the owner or claimant of such ground and the name of the claim or the description of the land claimed.

History: En. Sec. 2, Ch. 222, L. 1921; re-en. Sec. 3381, R.C.M. 1921; re-en. Sec. 3381, R.C.M. 1935; R.C.M. 1947, 46-1412.

Cross-References

Manner of locating claim, 82-2-101.

81-4-220. Marking — right of action against trespassing stock. A person owning or possessing agricultural or grazing land or patented or unpatented mining claims lying within the national forest reserves of this state or on the public range lying adjoining to any national forest reserve, the boundaries of which lands are not marked as required by the provisions of 81-4-218 through 81-4-220, may not have any claim or cause of action or right of action against the owner of sheep, cattle, or other livestock under the charge of a herder for trespass committed by the livestock upon that land, and this is the rule regardless of whether the trespassing livestock strayed on the land on their own inclination and without being driven or whether the livestock were herded or driven on the land. However, a person or persons may not claim exemption for trespassing under the provisions of this section if the person or persons have actual knowledge of the boundary lines of lands referred to in this section. Damages, other than nominal damages, may not be assessed against the trespass unless the landowner or the landowner's duly authorized agent, within 6 months after the trespass has been committed, gives the trespasser written notice demanding a sum certain for damages sustained by reason of the trespass.

History: En. Sec. 3, Ch. 222, L. 1921; re-en. Sec. 3382, R.C.M. 1921; amd. Sec. 1, Ch. 78, L. 1927; re-en. Sec. 3382, R.C.M. 1935; amd. Sec. 2, Ch. 31, L. 1963; R.C.M. 1947, 46-1413; amd. Sec. 2651, Ch. 56, L. 2009.

Cross-References

Definition of enter or remain unlawfully, 45-6-201.

Part 3
Herd Districts

81-4-301. Herd districts — creation, size, and location. (1) Herd districts may be created in any county in the state of Montana:

(a) upon petition of owners or possessors of 55% of the land in the district and providing that 25% or more of the land in the district is in actual cultivation or being used for residential purposes; or

(b) upon petition of owners or possessors of 75% of the land in the district.

(2) Herd districts must contain 12 square miles or more, lying not less than 1 mile in width, outside of the incorporated cities, except that herd districts may be created containing not less than 6 or more than 54 square miles, lying not less than 2 miles in width, when the territory joins and is contiguous with the boundaries of a city having a population of 10,000 or more and the territory to be created in a herd district has a suburban population of not less than 200 people.

(3) In formation of a herd district the entire holding of any owner or lessee must be included unless the owner or lessee consents that less than the owner or lessee's entire contiguous holdings be included in the petition.

(4) The petition must designate the months of the year when the herd district is effective, and upon presentation and filing of the petition, properly signed, giving the outside boundaries and description of the proposed district and the post-office address of the petition signers, with the clerk and recorder in the county in which the district is being created, the county commissioners of that county, upon receipt of the petition, shall set a date for hearing protests and verifying the petition signatures and shall give not less than 20 days' notice of the hearing by three publications in a newspaper of general circulation in the county of the proposed district. At the hearing held pursuant to the notices, the county commissioners shall examine the petition and shall cause a map to be made in order to determine the shape and regularity of the boundaries of the proposed district. The commissioners may then establish the district, but the district shall be established only in a manner that the district will be reasonably regular and symmetrical in shape or practicable in relation to the geographical features of the district. It is not required that the boundaries of a district follow section lines to meet the requirement of reasonably regular and symmetrical boundaries.

(5) Should it appear to the county commissioners after the hearing that the signatures attached to the petition were genuine, they shall immediately declare the herd district created and established. After making the declaration, the county commissioners shall give notice by four weekly publications in a newspaper nearest the district of the creation of the district, also stating the period that the district will be in effect. A district may not be in effect until 30 days have expired after the order.

(6) If the signature of lessee appears on the petition creating or abolishing any herd district, the owner or owners of the land may appear either in person or by agent and enter their protest and the board of county commissioners shall remove the name of the lessee from the petition, and a person may not withdraw the person's name after the hour set for hearing the protest.

History: En. Ch. 74, L. 1917; amd. Sec. 2, Ch. 167, L. 1919; re-en. Sec. 3384, R.C.M. 1921; amd. Sec. 1, Ch. 56, L. 1929; amd. Sec. 1, Ch. 117, L. 1931; re-en. Sec. 3384, R.C.M. 1935; amd. Sec. 1, Ch. 103, L. 1951; amd. Sec. 1, Ch. 209, L. 1959; amd. Sec. 1, Ch. 39, L. 1974; R.C.M. 1947, 46-1501(a); amd. Sec. 1, Ch. 488, L. 1979; amd. Sec. 1, Ch. 138, L. 1999; amd. Sec. 1, Ch. 40, L. 2003.

81-4-302. Dissolution. (1) When a petition praying that any established herd district be dissolved is filed with the county clerk and recorder of the county wherein such district has been established and it is set forth therein that such petition is signed by the owners or possessors of 55% or more of the lands lying within such district and that less than 25% of the lands included in such district is in actual cultivation, the said county clerk and recorder shall call such petition to the attention of the board of county commissioners of the county at its next regular meeting. At said meeting by its order the board shall set such petition for hearing at a specified time on a day certain of which notice shall be given by publication at least once in each week for 3 successive weeks in some newspaper of general circulation in the county.

(2) At the time fixed for hearing, the board of county commissioners shall first require proof of publication of the notice of said hearing to be made and thereafter shall consider the petition and hear all interested parties. At the conclusion of any such hearing, if the board of county commissioners shall find that notice of hearing has been given in the manner and for the time prescribed herein and that the owners or possessors of 55% or more of the lands lying within such herd district have signed the petition and request that such district be dissolved and that less than 25% of the lands included in such district are in actual cultivation, then the board shall forthwith spread such findings upon its minutes and thereupon shall enter an order in terms that by reason of such findings and of the proceedings had upon such petition the herd district is thereby dissolved. Forthwith, upon the making and entry of any such order aforesaid, the herd district affected thereby shall be dissolved for all purposes thereafter.

History: En. Ch. 74, L. 1917; amd. Sec. 2, Ch. 167, L. 1919; re-en. Sec. 3384, R.C.M. 1921; amd. Sec. 1, Ch. 56, L. 1929; amd. Sec. 1, Ch. 117, L. 1931; re-en. Sec. 3384, R.C.M. 1935; amd. Sec. 1, Ch. 103, L. 1951; amd. Sec. 1, Ch. 209, L. 1959; amd. Sec. 1, Ch. 39, L. 1974; R.C.M. 1947, 46-1501(b).

81-4-303. Exclusion of government land. Any tract of land embraced within any established herd district and which contains 18 sections of government land or more, so located that at least one-fourth of the perimeter of such tract coincides with the existing boundaries of such herd district, may be excluded therefrom upon proceedings had before the board of county

commissioners of the county wherein the said district has been established on a like petition, notice, and hearing and by a like order as in the case of proceedings for dissolving herd districts. When the exclusion of any such tract of land from an existing herd district is sought, the petition shall describe the tract to be excluded with common certainty and shall set forth that it is signed by the owners or possessors of 55% or more of the lands lying within the boundaries of the tract to be excluded and that less than 15% of the lands included in such tract is in actual cultivation. In any such case if the board of county commissioners at the conclusion of the hearing had shall find that the tract of land to be excluded conforms to the requirements of this section and that the allegations of the petition are true, its findings to that effect shall be spread upon the minutes and the board shall thereupon enter its order in terms that by reason of such findings and of the proceedings had upon such petition the tract of land described in the petition, which shall be further set forth with common certainty in the order, is thereby excluded from such herd district for all purposes thereafter. Forthwith upon the making and entry of any such order of exclusion the tract of land therein described shall be deemed for all purposes thereafter to be excluded from and to form no part of the herd district affected thereby.

History: En. Ch. 74, L. 1917; amd. Sec. 2, Ch. 167, L. 1919; re-en. Sec. 3384, R.C.M. 1921; amd. Sec. 1, Ch. 56, L. 1929; amd. Sec. 1, Ch. 117, L. 1931; re-en. Sec. 3384, R.C.M. 1935; amd. Sec. 1, Ch. 103, L. 1951; amd. Sec. 1, Ch. 209, L. 1959; amd. Sec. 1, Ch. 39, L. 1974; R.C.M. 1947, 46-1501(c).

81-4-304. Joint herd districts. Herd districts may be created jointly between any two or more counties of the state of Montana where the lands to be included in the district meet the requirements of this section and either extend across county boundaries under one ownership or are contiguous to the land of owners in the adjoining county wishing to participate in the herd district. The county commissioner boards of each county desiring to participate in a joint herd district shall comply with all the provisions of this section dealing with single-county districts. A joint herd district shall be created only after approval by all county commissioner boards of participating counties as provided for single-county herd districts in this section. Joint herd districts may be dissolved in the same manner as single-county herd districts.

History: En. Ch. 74, L. 1917; amd. Sec. 2, Ch. 167, L. 1919; re-en. Sec. 3384, R.C.M. 1921; amd. Sec. 1, Ch. 56, L. 1929; amd. Sec. 1, Ch. 117, L. 1931; re-en. Sec. 3384, R.C.M. 1935; amd. Sec. 1, Ch. 103, L. 1951; amd. Sec. 1, Ch. 209, L. 1959; amd. Sec. 1, Ch. 39, L. 1974; R.C.M. 1947, 46-1501(d).

81-4-305. Changing time when herd districts will be in effect — petition — notice — hearing. The time of year or period when any herd district heretofore or hereafter created under the provisions of the laws of this state is effective or will be in effect may be changed as herein provided, by the board of county commissioners of the county in which such herd district has been created, upon the presentation and filing with the clerk and recorder of such county a petition signed by the owners or possessors of 55% of the land in such district. Such petition shall designate the months of the year when such herd district is effective and designate the contemplated change. Upon receipt thereof, the county commissioners of such county shall set a date for hearing protests and verifying the signatures thereto and shall give not less than 20 days' notice of the same by posting five notices of hearing in five public places in the county, one of which shall be at the place such hearing is to be held and at least two of such notices to be posted within such herd district. Should it appear to the board of county commissioners after such hearing that the signatures attached to such petition are genuine, they shall immediately make an order changing the period of time such herd district will be in effect, as designated in such petition; after which the county commissioners must give notice by four weekly publications in some newspaper in the county nearest such district, stating the period such district will be in effect. The change of time shall not become effective until such notice has been published as herein provided. Upon the fourth publication of such notice, such change of time shall become effective and violation thereof shall be punished as provided under the laws of the state of Montana relative to herd districts.

History: En. Sec. 1, Ch. 78, L. 1931; re-en. Sec. 3389.1, R.C.M. 1935; R.C.M. 1947, 46-1507.

81-4-306. Penalty for permitting animals to run at large in herd districts. (1) Any person who is the owner or entitled to the possession of any horses, mules, cattle, sheep, llamas, alpacas, bison, asses, hogs, or goats, who willfully permits the animals to run at large within any herd district, is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $50 or more than $250 for each offense. Each day that each five head or less of

horses, mules, cattle, sheep, llamas, alpacas, bison, asses, hogs, or goats are willfully permitted to run at large constitutes a separate offense.

(2) Any person who is the owner or entitled to the possession of any bull, stallion, or jackass over 1 year of age who willfully permits the animal to run at large within any herd district is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $50 or more than $250 for each offense. Each day that a bull is permitted to run at large constitutes a separate offense.

History: En. Ch. 74, L. 1917; amd. Sec. 3, Ch. 167, L. 1919; re-en. Sec. 3385, R.C.M. 1921; amd. Sec. 1, Ch. 45, L. 1925; re-en. Sec. 3385, R.C.M. 1935; amd. Sec. 1, Ch. 165, L. 1945; R.C.M. 1947, 46-1502; amd. Sec. 2, Ch. 488, L. 1979; amd. Sec. 13, Ch. 166, L. 1989; amd. Sec. 8, Ch. 417, L. 1993.

81-4-307. Trespassing animals in herd district — retention for damages and costs. (1) If an animal referred to in 81-4-306 wrongfully enters the premises of a person within a herd district, the owner or person in control of the animal is liable for care and feeding of the animal and for any damages caused by the animal. The owner or occupant of the land upon which the wrongful entry is made may take into possession the animal, may reasonably care for the animal, may retain possession of the animal, and is entitled to a lien on the animal as security for the payment of damages caused by the animal and costs incurred in caring for the animal. If the owner of the animal or the person entitled to possession of the animal can be found or is known to the person who takes possession of the animal for trespass, it is the duty of the person taking possession to notify the owner or person in charge of the animal within 48 hours after taking possession by a notice in writing, mailed as a certified letter, directed to the owner or person in charge at the owner's or person's post-office address or by serving the notice on the owner or person personally. The notice must give a particular description of the animal and state the amount of damages and costs claimed and demand that within 48 hours after receipt of the notice the damages and costs be paid and that the animal be taken away from the property of the complainant.

(2) Upon demand and upon payment of the damages and costs, the owner or occupant of the land shall release and deliver possession of the animal to the owner or person entitled to possession of the animal. If the parties cannot agree upon the amount, then the owner or person entitled to possession of the animal shall give a receipt to the owner or occupant of the land who has possession of the animal. The receipt must fully describe the animal so that the animal may at any time be easily identified. Upon receiving the receipt, the owner or occupant of the land shall give possession of the animal to the owner or person entitled to possession of the animal. The owner or person receiving possession of the animal may not dispose of the animal but shall retain and keep the animal in possession as the legal custodian of the animal in order to meet and pay the amount of the lien on the animal for damages and costs due in consequence of the trespass.

(3) The party entitled to damages or costs shall within 10 days after delivery of possession of the animal commence an action in any court having jurisdiction to recover the damages and costs, and the animal must be held for the payment of any judgment as though held under a writ of attachment. At any time after the action is commenced, the owner or person entitled to possession of the animal, to whom delivery was made, may furnish and file a bond conditioned to pay the damages and costs incurred in the action, and upon approval of the bond by the justice of the peace, if the action is commenced in a justice court, or by the judge or clerk of the district court, if the action is commenced in the district court, the lien and claim upon the animal must be discharged.

(4) If the owner or person entitled to possession of the animal does not furnish a bond within 10 days after the service of summons in the action, an order may be issued authorizing and directing the constable or sheriff to take possession and hold the animal to satisfy any judgment that may be recovered in the action. The animal, when taken possession of by the officer, must be held, treated, and sold under execution as though seized by writ of attachment.

(5) The owner or person entitled to possession of the animal may, in lieu of furnishing a bond, deposit an amount of money sufficient to pay any judgment that may be recovered in the action, the amount to be determined by the justice or judge of the court in which the action is pending. If the owner or person entitled to possession of the animal, after delivery of possession without payment of damages and costs provided for in this section, sells or disposes of the animal

or any part of the animal, permits the animal to be taken from the person's possession, or in any manner prevents the seizure of the animal by the constable or sheriff before the lien on the animal is fully discharged, the owner or person entitled to possession of the animal is guilty of a misdemeanor and in addition is liable to the party entitled to damages and costs in an amount that is double the value of the animal. At the time of delivery or possession of the animal to the owner or person entitled to possession of the animal, a written statement of the amount of the damages and costs must be furnished to the owner or person entitled to the possession of the animal by the person claiming the damages and costs.

(6) If the owner or claimant of the animal is not known to the person taking possession of the animal, the person shall give notice within 48 hours by posting a notice at the nearest post office and serving a similar notice on the stock inspector of the district. The notice must describe the animal and the brand on the animal and give a minute description of the animal, together with the date of the trespass.

History: En. Ch. 74, L. 1917; amd. Sec. 4, Ch. 167, L. 1919; re-en. Sec. 3386, R.C.M. 1921; amd. Sec. 1, Ch. 165, L. 1931; re-en. Sec. 3386, R.C.M. 1935; R.C.M. 1947, 46-1503; amd. Sec. 96, Ch. 51, L. 1999.

Cross-References

Writ of attachment, Title 27, ch. 18.
Definition of enter or remain unlawfully, 45-6-201.
Penalty for misdemeanor, 46-18-212.

81-4-308. Retrieval of impounded animals — misdemeanor — penalty. A person who takes or rescues an animal impounded as provided in 81-4-307 from the possession of the person with custody of the animal without the possessor's consent is guilty of a misdemeanor and upon conviction shall be fined not less than $100 or more than $500 or be confined in the county jail for not more than 60 days, or both.

History: En. Sec. 6, Ch. 167, L. 1919; re-en. Sec. 3388, R.C.M. 1921; re-en. Sec. 3388, R.C.M. 1935; R.C.M. 1947, 46-1505; amd. Sec. 3, Ch. 488, L. 1979; amd. Sec. 2652, Ch. 56, L. 2009.

81-4-309. Unlawful introduction of livestock into herd district a misdemeanor — penalty. Any person not the owner or person in charge of any livestock who causes any livestock to enter any herd district established under the provisions of 81-4-301 through 81-4-309 is guilty of a misdemeanor and upon conviction thereof is subject to a fine of not less than $250 or more than $500 or confinement in the county jail not less than 60 days or both such fine and imprisonment and is liable for all damages and costs occurring from such trespass. For the purposes of this section, each separate animal so moved constitutes a separate offense.

History: En. Sec. 7, Ch. 167, L. 1919; re-en. Sec. 3389, R.C.M. 1921; re-en. Sec. 3389, R.C.M. 1935; R.C.M. 1947, 46-1506; amd. Sec. 3, Ch. 14, L. 1979; amd. Sec. 4, Ch. 488, L. 1979.

81-4-310. Annexation into existing herd district. (1) Owners or possessors of land that is contiguous to a herd district may petition to have their property annexed to that district. The petition must be properly signed by the owners or possessors of at least 55% of the affected land and must include the post-office address of all petition signers. The petition must state the outside boundaries and a description of the property to be annexed to the existing district. When the petition is filed with the clerk and recorder in the county in which the existing district lies, the county commissioners of that county shall set a date for hearing protests and verifying petition signatures. The county commissioners shall provide notice of the hearing by publishing the hearing date and a list of the properties proposed to be annexed, at least three times in a newspaper of general circulation in the county, not less than 20 days prior to the hearing date.

(2) At the hearing held pursuant to subsection (1), the county commissioners shall examine the petition and have a map drawn up in order to determine the shape and regularity of the boundaries of the property proposed for annexation. If the county commissioners determine that the boundaries are reasonably regular and symmetrical in shape in relation to the geographical features of the properties proposed for annexation, the county commissioners may declare that those properties are annexed into the existing herd district.

(3) If the county commissioners declare the properties annexed to the existing herd district, they shall give notice of the annexation by four weekly publications in a newspaper of general circulation in the county. Annexation does not become effective until 30 days after the declaration of annexation is made, as provided in subsection (2).

History: En. Sec. 2, Ch. 138, L. 1999; amd. Sec. 2, Ch. 512, L. 2001.

81-4-311. Duty to build and maintain fences. Upon creation of a herd district pursuant to 81-4-301, 81-4-304, or 81-4-322, fences must be constructed by the entities creating the herd district. Upon approving an annexation to an existing herd district pursuant to 81-4-310, fences must be constructed by the entities being annexed into the herd district. All fences must be maintained pursuant to 70-16-205. All fences must conform with the requirements of 81-4-101. An action to enforce the provisions of this section may be brought by the aggrieved party in the district court in the county where the land is situated.

History: En. Sec. 1, Ch. 512, L. 2001.

81-4-312 through 81-4-320 reserved.

81-4-321. Definition. The term "horses" when used in 81-4-321 through 81-4-328 shall include any mare, gelding, stallion, colt, foal, filly, mule, jack, and jenny.

History: En. Sec. 4, Ch. 119, L. 1931; amd. Sec. 2, Ch. 57, L. 1933; re-en. Sec. 3389.5, R.C.M. 1935; R.C.M. 1947, 46-1604(part).

81-4-322. Horse herd districts — size — location — petition — notice and hearing — abolishment. (1) Horse herd districts may be created in any county in the state of Montana upon the petition of owners or possessors of 55% of the land of the district. The district must contain 12 square miles or more lying not less than 1 mile in width outside of incorporated cities or towns. The petition must designate the months of the year when horse herd district regulations are effective.

(2) Upon presentation and filing of a petition properly signed and reciting the outside boundaries and description of the proposed district, together with the post-office address of the signers, with the clerk and recorder in the county in which the the district is being created, the county commissioners of the county upon receipt of the petition shall set a date for hearing protests and verification of signatures and shall give not less than 20 days' notice of the hearing by three publications in a newspaper of general circulation in the county of the proposed district. If it appears to the county commissioners, after the hearing, that the signatures attached to the petition were genuine, they shall immediately make an order declaring the horse herd district created and established, after which the county commissioners shall give notice by two weekly publications in some newspaper in the county, nearest the district, stating the period when the horse herd district will be in effect and when the district is not in effect. The order may not be effective until 30 days have expired after the order.

(3) Herd districts may be abolished at any time upon proceedings as set forth for the establishment of a herd district.

(4) The estimated expense of all publications required by 81-4-321 through 81-4-328 must be paid by the petitioners, and no part of the expenses may be paid by the county.

(5) Upon petition of an owner or possessor of land lying contiguous and adjoining any horse herd district and upon like hearing and notice as provided in this section, the lands must be included in the horse herd district and become a part of the district.

(6) If the signature of a lessee appears on the petition creating or abolishing any horse herd district, the owner or owners of the land may appear either in person or by agent and enter their protest, and the board of county commissioners shall remove the name of the lessee from the petition. A person may not be permitted to withdraw the person's name after the hour set for hearing the petition.

History: En. Sec. 1, Ch. 119, L. 1931; amd. Sec. 1, Ch. 57, L. 1933; re-en. Sec. 3389.2, R.C.M. 1935; R.C.M. 1947, 46-1601; amd. Sec. 2653, Ch. 56, L. 2009.

81-4-323. Petition to dissolve horse herd district — hearing and notice — order of county commissioners. When a petition praying that any established horse herd district be dissolved is filed with the county clerk and recorder of the county wherein such district has been established, and it is set forth therein that such petition is signed by the owners or possessors of 55% or more of the lands lying within such district, the county clerk and recorder shall call such petition to the attention of the board of county commissioners of the county at its next regular meeting. At said meeting by its order the board shall set such petition for hearing at a specified time on a day certain of which notice shall be given by publication at least once in each week, for 3 successive weeks in some newspaper of general circulation in the county. At the time fixed for hearing the board of county commissioners shall first require proof of publication

of the notice of said hearing to be made and thereafter shall consider the petition and hear all interested parties. At the conclusion of any such hearing, if the board of county commissioners shall find that notice of the hearing has been given in the manner and for the time prescribed herein and that the owners or possessors of 55% or more of the lands lying within such herd district have signed the petition and request that such district be dissolved, then the said board shall forthwith spread such findings upon its minutes and thereupon shall enter an order in terms that by reason of such findings and of the proceedings had upon such petition the said horse herd district is thereby dissolved. Forthwith upon the making and entry of any such order aforesaid the horse herd district affected thereby shall be dissolved for all purposes thereafter.

History: En. Sec. 4A, Ch. 119, L. 1931; re-en. Sec. 3389.6, R.C.M. 1935; R.C.M. 1947, 46-1605.

81-4-324. Horses running at large in herd district prohibited. All horses are hereby prohibited from running at large within any horse herd district as defined in 81-4-322.

History: En. Sec. 2, Ch. 119, L. 1931; re-en. Sec. 3389.3, R.C.M. 1935; R.C.M. 1947, 46-1602.

81-4-325. Penalty and liability for horses wrongfully entering on premises in horse herd district. If any such horse or horses wrongfully enter upon premises within such district of any person, the owner or person in control of such horse or horses shall be punished according to the provisions of 81-4-309 and in addition to said punishment shall be liable for all damages sustained thereby to the party entitled thereto.

History: En. Sec. 3, Ch. 119, L. 1931; re-en. Sec. 3389.4, R.C.M. 1935; R.C.M. 1947, 46-1603.

81-4-326. Retention and sale of horses for damages and care — procedure. (1) The owner or occupant of the land upon which wrongful entry is made under 81-4-325 may take into the owner's or occupant's possession the horse or horses and shall reasonably care for the horse or horses while in possession and may retain possession of the horse or horses and has a lien and claim on the horse or horses as security for payment of the damages and reasonable charges for the care of the horse or horses while in the owner's or occupant's possession. The person taking up the horse or horses shall within 48 hours after taking possession notify the owner, owners, or persons in charge of the horse or horses by a notice in writing, describing the horse or horses taken up, including marks and brands, if any, the amount of damages claimed, the charge per head per day for caring for and feeding the horse or horses, and, either by legal subdivisions or other general description, the location of the premises upon which the horse or horses are held and requiring that person within 48 hours after receiving the notice to take the horse or horses away after making full payment for all damages and costs of the horse or horses. The notice must be given by personal service on the owner, owners, or person in charge of the horse or horses or by leaving the notice at that person's usual place of residence with some member of that person's family over 14 years of age or by sending the notice by prepaid certified mail addressed to that person's last-known place of residence. Service by certified mail is considered complete upon the deposit of the notice in the post office.

(2) Upon demand, the owner or occupant of the land shall release and deliver possession of the horse or horses to the owner or person entitled upon payment of damages and charges, but payment of damages and charges may not act as a bar to the prosecution of the person, owner, or person in control of the horse or horses as provided in subsection (1). If the owner or claimant of the horse or horses is not known to the person taking up the horse or horses or the owner or claimant refuses to pay the amount of damages and charges, the person taking up the horse or horses shall, within 72 hours from the time the horse or horses were taken up, deliver to the sheriff or a constable of the county in which the horse or horses were taken up a statement containing the information required to be given in the notice. In addition, the person shall mail by prepaid certified mail a copy of the statement addressed to the nearest state livestock inspector. Upon receipt of the statement, the sheriff or constable shall proceed to advertise and sell at public auction the horse or horses taken up.

History: En. Sec. 4, Ch. 119, L. 1931; amd. Sec. 2, Ch. 57, L. 1933; re-en. Sec. 3389.5, R.C.M. 1935; R.C.M. 1947, 46-1604(1), (2); amd. Sec. 2654, Ch. 56, L. 2009.

81-4-327. Sale of horses — disposition of proceeds. (1) Prior to a sale as authorized by 81-4-326, the sheriff shall have the horses classified as follows:

(a) Class 1 must include:

(i) horses not bearing a registered brand and that in the opinion of the stock inspector are of a value not to exceed $10 per head; and

(ii) horses bearing a registered brand but that the owner has failed to redeem as provided in this part, after notice given, and that in the opinion of the stock inspector are of a value not to exceed $10 per head.

(b) Class 2 must include horses bearing registered brands and that in the opinion of the stock inspector are of a value in excess of $10 per head.

(2) Horses in class 1 must be sold on 10 days' notice posted at the courthouse of each county in which any portion of the district lies and posted in three other public places in the county, one of which must be in that portion of the district included in the county.

(3) Horses in class 2 must be sold on notice posted for 21 days and otherwise as notices are required to be posted for the sale of horses in class 1, and the notice must be published once a week for 2 successive weeks before the sale in some newspaper published in the county seat of each county that includes any part of the district, if there is a newspaper, and if there is no newspaper published in any county comprising a part of the district, the notice must be published in any newspaper of general circulation in the county or counties that include the district. The notice required to be published for the sale of horses in class 2 must describe each horse to be sold, giving the approximate age, description, and brands, if any. The proceeds of the sale must be applied by the sheriff to the discharge of the claim and the costs of the proceedings in selling the property and enforcing the claim, and the remainder, if any, must be deposited with the county treasurer who shall keep the same in a special fund to be designated as the "horse herd district fund", giving the number of district if there is more than one district.

(4) A separate fund of the type specified in subsection (3) must be kept by the county treasurer for each of the districts created in that county. The county treasurer shall make a record of the description of each horse, the amount received for the horse, and the amount of deductions. The record must be open to public inspection, and any person making claim of ownership of a horse to the board of county commissioners at any time within 1 year from the date of sale and submitting proof of ownership to the board with the claim to the satisfaction of the board is entitled to receive the excess received from the sale of that horse. Any money received from the sale of a horse that is not claimed within 1 year after the sale must at the expiration of that period be transferred to the general fund of the county.

History: **En. Sec. 4, Ch. 119, L. 1931; amd. Sec. 2, Ch. 57, L. 1933; re-en. Sec. 3389.5, R.C.M. 1935; R.C.M. 1947, 46-1604(part); amd. Sec. 2655, Ch. 56, L. 2009.**

81-4-328. Liability of officers. No officer, board, or employee of any county or any employee of such officer or board shall be liable for any act performed in good faith in discharging official duties under 81-4-321 through 81-4-327, and all such acts shall be presumed to have been in good faith and in conformity with 81-4-321 through 81-4-327.

History: **En. Sec. 5, Ch. 119, L. 1931; re-en. Sec. 3389.7, R.C.M. 1935; R.C.M. 1947, 46-1606.**

Cross-References

Liability exposure, Title 2, ch. 9.

Part 4
Impoundment of Livestock in Municipalities

81-4-401. Certain livestock not to run at large in municipalities. Horses, cattle, mules, sheep, llamas, alpacas, bison, goats, or swine may not be allowed to run at large in any incorporated city or town.

History: **En. Sec. 1, Ch. 65, L. 1917; re-en. Sec. 3401, R.C.M. 1921; re-en. Sec. 3401, R.C.M. 1935; R.C.M. 1947, 46-1714; amd. Sec. 14, Ch. 166, L. 1989; amd. Sec. 9, Ch. 417, L. 1993.**

81-4-402. Punishment for permitting trespass of livestock. Any person owning livestock or having in charge any horses, mules, cattle, sheep, llamas, alpacas, bison, goats, or swine who willfully and unlawfully permits the livestock to trespass in violation of any of the provisions of 81-4-401 is guilty of a misdemeanor and upon conviction shall be punished as provided by law.

History: **En. Sec. 2, Ch. 65, L. 1917; re-en. Sec. 3402, R.C.M. 1921; re-en. Sec. 3402, R.C.M. 1935; R.C.M. 1947, 46-1715; amd. Sec. 15, Ch. 166, L. 1989; amd. Sec. 10, Ch. 417, L. 1993.**

Cross-References

Penalty for misdemeanor, 46-18-212.

81-4-403. Impounding animals — duties of cities and towns. When any livestock or domestic animals of any kind are impounded, seized, restrained, or held by any city or town or its officers or agents, it shall be the duty of such city or town, its officers or agents, to give notice to the owner of such livestock or domestic animals so impounded, seized, restrained, or held by such city or town, if the owner is known, in the manner hereinafter provided.

History: En. Sec. 1, Ch. 161, L. 1921; re-en. Sec. 5175, R.C.M. 1921; re-en. Sec. 5175, R.C.M. 1935; R.C.M. 1947, 46-2001.

Cross-References

Control of livestock in emergency road construction area, 7-14-2129.

81-4-404. Contents of notice. Said notice shall be in writing and shall give:

(1) the number, description, marks, and brands of such stock when impounded, seized, restrained, or held, with the reasons therefor;

(2) the amount of charges, if any, which shall be reasonable and in no case exceed the actual cost of holding and costs in event of sale; and

(3) what disposition will be made of said stock if such charges are not paid and when and where such disposition shall be made.

History: En. Sec. 2, Ch. 161, L. 1921; re-en. Sec. 5176, R.C.M. 1921; amd. Sec. 1, Ch. 69, L. 1927; re-en. Sec. 5176, R.C.M. 1935; R.C.M. 1947, 46-2002.

81-4-405. Service upon owner. If the owner of livestock described in this part is known and if the owner's post-office address is known, the notice must be served upon the owner personally.

History: En. Sec. 3, Ch. 161, L. 1921; re-en. Sec. 5177, R.C.M. 1921; re-en. Sec. 5177, R.C.M. 1935; R.C.M. 1947, 46-2003; amd. Sec. 2656, Ch. 56, L. 2009.

81-4-406. Service on department of livestock. If the owner of livestock described in this part is unknown or if the owner is known but the owner's post-office address is unknown, the notice must be served on the department.

History: En. Sec. 4, Ch. 161, L. 1921; re-en. Sec. 5178, R.C.M. 1921; re-en. Sec. 5178, R.C.M. 1935; amd. Sec. 157, Ch. 310, L. 1974; R.C.M. 1947, 46-2004; amd. Sec. 2657, Ch. 56, L. 2009.

81-4-407. Service by mail. Service of such notice may be made personally or by registered or certified mail, postage prepaid, properly addressed, and placed in the United States post office at least 8 days before the day fixed for the disposition of said stock.

History: En. Sec. 5, Ch. 161, L. 1921; re-en. Sec. 5179, R.C.M. 1921; re-en. Sec. 5179, R.C.M. 1935; R.C.M. 1947, 46-2005.

81-4-408. Duty of officers to ascertain brands. It shall be the duty of such city or town and its officers or agents to use reasonable diligence to ascertain any and all marks and brands on such stock, and in case such animals are not branded or marked or the brand or marks are mutilated or undeterminable, such facts shall be noted in said notice.

History: En. Sec. 6, Ch. 161, L. 1921; re-en. Sec. 5180, R.C.M. 1921; re-en. Sec. 5180, R.C.M. 1935; R.C.M. 1947, 46-2006.

Cross-References

Recording of brands required, 81-3-102.

81-4-409. Department to ascertain owner — notice. When the notice is served, the department shall ascertain the owner of the stock, if possible, and when the owner is ascertained, immediately furnish the owner with the information contained in the notice. The department shall notify the city or town, its officers or agents, of the name and post-office address of the owner.

History: En. Sec. 7, Ch. 161, L. 1921; re-en. Sec. 5181, R.C.M. 1921; re-en. Sec. 5181, R.C.M. 1935; amd. Sec. 158, Ch. 310, L. 1974; R.C.M. 1947, 46-2007.

81-4-410. Provisions mandatory. The provisions of this part are mandatory, and the owner of livestock may not lose title or right of possession to the owner's stock unless the provisions of this part are strictly complied with.

History: En. Sec. 8, Ch. 161, L. 1921; re-en. Sec. 5182, R.C.M. 1921; re-en. Sec. 5182, R.C.M. 1935; R.C.M. 1947, 46-2008; amd. Sec. 2658, Ch. 56, L. 2009.

Part 5
Roundup of Abandoned Horses

81-4-501. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Abandoned horse" means a horse, mare, gelding, filly, jack, mule, or other animal of the genus Equus, 1 year of age or over and unbranded or, if branded, which has escaped assessment for taxation for the year immediately preceding its impounding as provided for in this part, and running at large on the open range of this state, including foals running with dams coming within the above definition. An animal not bearing a decipherable brand which is recorded with the department of livestock is considered unbranded.

(2) "Open range" means all lands in this state not enclosed by a fence. The term "open range" includes all highways outside of private enclosures and used by the public, whether the highways have been formally dedicated to the public or not.

(3) "Person" includes individuals, associations, persons, and corporations.

History: En. Sec. 1, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.1, R.C.M. 1935; amd. Sec. 148, Ch. 310, L. 1974; R.C.M. 1947, 46-1801.

81-4-502. Abandoned horses on public range declared public nuisance subject to condemnation — right of owner. It is unlawful for any person owning or having control of any horse to abandon the horse upon the open range in the state of Montana, and such horses so running at large upon the open range in the state are a public nuisance and a public menace and are condemned, subject to the right of the owner of any such abandoned horse to reclaim the same under the conditions hereinafter provided.

History: En. Sec. 2, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.2, R.C.M. 1935; amd. Sec. 54, Ch. 12, L. 1977; R.C.M. 1947, 46-1802.

Cross-References

Public nuisance, 45-8-111.

81-4-503. Roundup of abandoned horses — petition — expenses. (1) For the purpose of speedily clearing abandoned horses from the open range in any county or in any district thereof, the board of county commissioners of any such county must, upon the petition of at least five responsible property owners, inhabitants of the proposed roundup district engaged in the livestock business and paying taxes upon livestock in such county, or upon the petition of a reputable local livestock association, authorize a roundup of abandoned horses in any district within such county.

(2) Upon the filing of such petition, the board shall make an order authorizing such roundup, which order shall describe generally such district with reasonable certainty. Said district shall not include more or less territory than that described in the petition. Such order shall also specify the date on or within 10 days after which the roundup shall begin and shall designate the place within the district at which the headquarters of such roundup shall be maintained.

(3) Any such roundup shall be conducted in such manner as to cause as little disturbance as reasonably possible to horses running lawfully on the open range.

(4) All expense of any such roundup shall be paid by the petitioners at whose request the same is initiated, and no county officer or board shall have any power to expend any moneys of the county or incur any obligation on its behalf in connection with any such roundup. Such petitioners, however, shall be reimbursed for the expense of such roundup, as and when moneys may be available for that purpose in the abandoned horse fund, by warrants issued upon claims filed as in the case of other claims against the county.

History: En. Sec. 3, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.3, R.C.M. 1935; R.C.M. 1947, 46-1803.

81-4-504. Notice of holding roundup — publication — form. Notice of the roundup shall be given by the board of county commissioners at least 30 days before the date when the roundup begins. The notices shall be published at least once a week for 3 successive weeks in some newspaper of general circulation, printed and published in the county in which the roundup is to be held, if a newspaper of this type is printed and published in the county. The notice shall be posted in at least five public places outside of the county seat of the county on

public highways in the county or district, as the case may be, in which the roundup is to be held. Three notices shall be posted in three public places in the county seat. One of the notices shall be posted at the front door of the courthouse. The notices posted outside of the county seat are to be posted not less than 2 miles apart, and all posted notices are to be posted at least 20 days before the date on which the roundup begins as stated in the notice. If no newspaper is printed and published in the county, publication in a newspaper is not required. At least 20 days before the date on which the roundup is to begin, a copy of the notice shall be filed with the department by the clerk of the board of county commissioners.

History: En. Sec. 4, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.4, R.C.M. 1935; amd. Sec. 149, Ch. 310, L. 1974; R.C.M. 1947, 46-1804.

81-4-505. Roundup supervisor — duties — bond. (1) All roundups must be under the control and supervision of the board of county commissioners of the county in which the roundup is held. Roundup districts must be numbered in the order of their creation. Each roundup must be conducted by a person designated or employed by the board of county commissioners, whose official designation must be "roundup supervisor, ... roundup district, ... County, state of Montana".

(2) The roundup supervisor shall maintain headquarters at the place designated by the board of county commissioners in its order as the headquarters of the roundup. The roundup supervisor has the power to administer oaths and affirmations in all matters coming within the scope of official duties.

(3) If the roundup supervisor is not employed by the board of county commissioners, the board shall require from the roundup supervisor an official bond, in an amount not less than $2,500 and not to exceed $5,000. The bond must be conditioned as official bonds of county officers and is subject to all provisions of law applicable to county officer bonds.

History: En. Sec. 5, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.5, R.C.M. 1935; R.C.M. 1947, 46-1805(part); amd. Sec. 2659, Ch. 56, L. 2009; amd. Sec. 35, Ch. 291, L. 2009.

Cross-References

Bonds of county officers and employees, Title 2, ch. 9, part 7.

Official bonds of county officers, 7-4-2212.

81-4-506. Sale of abandoned horses. All abandoned horses taken up in a roundup must be delivered to the roundup supervisor in charge of the roundup and must be offered by the supervisor for sale at public auction and sold to the highest bidder for cash, if there is any bidder, and any abandoned horses offered for sale and for which no bid is made must be destroyed or otherwise disposed of in the discretion of the board of county commissioners unless reclaimed as provided in this part.

History: En. Sec. 5, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.5, R.C.M. 1935; R.C.M. 1947, 46-1805(part); amd. Sec. 2660, Ch. 56, L. 2009.

81-4-507. Gathering horses in roundup district before roundup unlawful — rights of owner. It is unlawful for a person or persons to round up from the range any horse or horses in a roundup district after the districts have been designated by the county commissioners until after the roundup. However, an owner of horses on which the taxes have been paid in this district may gather the horses by notifying the roundup supervisor and being accompanied by the supervisor or a representative of the supervisor in gathering the horses.

History: En. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.16, R.C.M. 1935; R.C.M. 1947, 46-1815; amd. Sec. 2661, Ch. 56, L. 2009.

81-4-508. Claim of owner — cost of keeping and feeding horses. A person claiming to be the owner of an abandoned horse or horses may serve written notice upon the roundup supervisor in charge of the roundup of the claim of ownership at any time before sale or other final disposition of the horse or horses. The claim of ownership must be verified by the oath of the claimant or someone on the claimant's behalf, and the sale or other final disposition of the horse or horses must be postponed from time to time as may be necessary to enable the claimant to make proof of the claim as provided in 81-4-509. The postponement may not be allowed unless the claimant pays to the roundup supervisor in charge of the roundup or delivers to the supervisor satisfactory security for the estimated cost of keeping and feeding the horse or horses until sale or other final disposition or delivery to the owner.

History: En. Sec. 6, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.6, R.C.M. 1935; R.C.M. 1947, 46-1806; amd. Sec. 2662, Ch. 56, L. 2009.

81-4-509. Proof of ownership — payment of taxes and penalties — decision of commissioners on claim. A person claiming an abandoned horse or horses as provided in 81-4-508 shall, within 5 days after serving the notice provided for in 81-4-508 or within a further time that the board of county commissioners allows, upon good cause shown, submit to the board proof of ownership and shall deposit with the board the amount of any unpaid taxes and penalties that may be assessed against the horse or horses, together with a $100 roundup fee. The board shall decide all cases in preference to all other matters coming before it and at the earliest possible moment. If the claim is allowed, the roundup supervisor in charge of the roundup must immediately be notified of the decision and the supervisor shall deliver the horse or horses to the owner upon payment of any amount due from the owner for the estimated cost of keeping and feeding the horse or horses. The deposit made by the owner of taxes, penalties, and the roundup fee must be delivered by the board to the county treasurer. If the board denies the claim of ownership, it shall notify the person in charge of the roundup of its decision and the horse or horses as to which the claim is denied must be offered for sale at the earliest convenient session of the sales being held under the roundup. If the horses are not sold, they must be destroyed or otherwise disposed of as though no claim had been presented.

History: En. Sec. 7, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.7, R.C.M. 1935; R.C.M. 1947, 46-1807; amd. Sec. 2663, Ch. 56, L. 2009; amd. Sec. 36, Ch. 291, L. 2009.

81-4-510. Notice of sale of abandoned horses — form — time of sale — title. (1) Before a sale may be held, at least 10 days' notice must be given by publication and posting in the manner specified in 81-4-504, except that publication, if made in a newspaper, must be once each week for 2 successive weeks, and posting must be done at least 5 days before the date of sale. The notice must be in substantially the following form:

NOTICE OF SALE OF ABANDONED HORSES

Notice is given that on .... day, the .... day of ...., 20..., at .... in the county of ...., state of Montana, beginning at the hours of ....m., the following described abandoned horses will be sold at public auction to the highest bidder for cash:

(Give general description of horses to be sold by brand, if any, color, approximate weight, and estimated age.)

Any horses not reclaimed before sale as provided by law and for which no bid is made at the sale will be destroyed or otherwise disposed of in the discretion of the board of county commissioners of .... County, state of Montana.

Dated the .... day of ...., 20...

By order of the board of county commissioners of .... County, Montana.

By ...., clerk of the board.

(2) All sales must be held between the hours of 8 a.m. and 6 p.m. and may be continued from time to time until all abandoned horses taken in the roundup have been disposed of. On payment of the price bid for any horse sold, the delivery of the horse, with a bill of sale, vests the title to the horse in the purchaser.

History: En. Sec. 8, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.8, R.C.M. 1935; R.C.M. 1947, 46-1808; amd. Sec. 97, Ch. 51, L. 1999.

81-4-511. Assessment of horses taken in roundup. Following a roundup held pursuant to this part, the department of revenue shall immediately assess all horses that have been taken up in a roundup and that may be sold or reclaimed before sale and not already assessed for the current year. The department of revenue shall transmit to the county treasurer a copy of each assessment made. Any horses that have escaped the assessment mentioned in 81-4-501 must be assessed as provided for in 15-8-306.

History: En. Sec. 9, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.9, R.C.M 1935; R.C.M. 1947, 46-1809; amd. Sec. 150, Ch. 27, Sp. L. November 1993.

Cross-References

How property assessed, Title 15, ch. 8, part 3.

81-4-512. Disposition of proceeds — abandoned horse fund — use of fund. All money paid by reclaiming owners of any horse or horses must be paid to the county treasurer and kept in a fund to be designated as the "abandoned horse fund, roundup district No. .... (giving number of district in which the horse or horses were rounded up)". A separate fund must

be kept by the county treasurer for each roundup district created in that county. All money received from the sale of horses must be paid to the county treasurer, and if the sum received from the sale of any horse does not exceed the taxes, the penalties, and the roundup fee, the whole amount must be immediately deposited in the abandoned horse fund for the district in which the horse or horses were rounded up. If the sum received from the sale of a horse exceeds the taxes, the penalties, and the roundup fee, the amount of the taxes, the penalties, and the roundup fee must be deposited in the abandoned horse fund for the district and the excess must be kept by the treasurer in a separate fund. The treasurer shall make a record of the description of the horse, the amount received for the horse, and the amount of deductions for the taxes, the penalties, and the roundup fee. The record must be open to public inspection. A person making claim to the board of county commissioners, at any time within 6 months from the date of sale, of ownership of the horse and submitting proof of ownership to the board with the claim, to the satisfaction of the board, is entitled to receive the excess received from the sale of the horse. Any money received from the sale of a horse in excess of the taxes, the penalties, and the roundup fee that is not claimed within 6 months after the sale, at the expiration of that period, becomes the property of the county and must be transferred to the abandoned horse fund for the district in which the horse was rounded up.

History: En. Sec. 10, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.10, R.C.M. 1935; R.C.M. 1947, 46-1810; amd. Sec. 2664, Ch. 56, L. 2009.

81-4-513. Report of roundup supervisor — disposition of copies. The roundup supervisor in charge of the roundup shall keep an accurate record of all proceedings under the order for the roundup. Within 30 days after the roundup is completed, the supervisor shall prepare in triplicate and verify by oath a full, true, and accurate report of all the proceedings under the order for the roundup. The report must include a complete financial statement, the number and description of horses impounded, and the manner of disposition of the horses. One copy of the report must be filed with the clerk of the board of county commissioners, and the filing is notice of the contents of the report and prima facie proof of the facts stated in the report. Copies of the report must be filed with the department of revenue and with the county treasurer for their information and appropriate action.

History: En. Sec. 11, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.11, R.C.M. 1935; R.C.M. 1947, 46-1811; amd. Sec. 151, Ch. 27, Sp. L. November 1993; amd. Sec. 2665, Ch. 56, L. 2009.

81-4-514. Transfer of moneys of abandoned horse fund to general fund. On November 30 of each year, the county treasurer shall, if all claims against any such abandoned horse fund are paid and a balance remains in such fund, transfer all moneys so remaining in such fund to the general fund of the county, subject to the usual division with the state as to any portion of such balance which shall consist of taxes collected on the abandoned horses. No part of the roundup fee of $5 shall be paid to the state. Any portion of the taxes so collected which shall be used in paying claims against said fund is hereby declared to be a part of the cost of collection of such taxes.

History: En. Sec. 12, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.12, R.C.M. 1935; R.C.M. 1947, 46-1812.

81-4-515. Liability of officers and employees. No officer, board, or employee of any county or any employee of any such officer or board shall be liable for any act performed in good faith in discharging official duties under this part. All such acts shall be presumed to have been in good faith and in conformity with this part.

History: En. Sec. 13, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.13, R.C.M. 1935; R.C.M. 1947, 46-1813.

Cross-References

Governmental entity to be joined as defendant — immunization, defense, and indemnification of employees, 2-9-305.

81-4-516. Limitation of powers or duties of officers. Except as provided in this part, this part may not be construed as limiting the powers or duties of the department of revenue, county treasurers, or other boards or officers.

History: En. Sec. 14, Ch. 140, L. 1925; amd. Sec. 1, Ch. 29, L. 1927; re-en. Sec. 3406.13, R.C.M. 1935; R.C.M. 1947, 46-1814; amd. Sec. 152, Ch. 27, Sp. L. November 1993.

Part 6
Estrays

Part Cross-References

Control of animals running at large, 7-23-4101.
Livestock on highways, Title 60, ch. 7.
Duties of livestock market operator when stock ownership in doubt, 81-8-263.

81-4-601. Estray defined. In this part, "estray" means a horse, mule, mare, gelding, colt, llama, alpaca, bison, cow, ox, bull, stag, steer, heifer, calf, sheep, or lamb:

(1) not bearing a brand and the ownership of which cannot be determined by the stock inspector of the district in which the animal is found by inquiry among reputable resident stock owners or freeholders;

(2) bearing a recorded brand, the owner of which brand cannot be located at or through the post office designated on the records of the department or which owner cannot be located by the stock inspector of the district where the estray is found by inquiry among reputable resident stock owners or freeholders; or

(3) which bears an unrecorded brand, the owner of which unrecorded brand cannot be ascertained by the stock inspector of the district in which the animal is found by inquiry among reputable resident stock owners or freeholders.

History: En. Sec. 5, Ch. 34, L. 1915; re-en. Sec. 3337, R.C.M. 1921; re-en. Sec. 3337, R.C.M. 1935; amd. Sec. 1, Ch. 112, L. 1959; amd. Sec. 1, Ch. 37, L. 1963; amd. Sec. 137, Ch. 310, L. 1974; R.C.M. 1947, 46-1005; amd. Sec. 16, Ch. 166, L. 1989; amd. Sec. 11, Ch. 417, L. 1993.

81-4-602. Estrays — department authorized to take possession. The department and its appointed stock inspectors may take possession of estrays found running at large in this state and may dispose of the estrays, subject to the following restrictions.

History: En. Sec. 1, Ch. 34, L. 1915; re-en. Sec. 3333, R.C.M. 1921; re-en. Sec. 3333, R.C.M. 1935; amd. Sec. 133, Ch. 310, L. 1974; R.C.M. 1947, 46-1001.

81-4-603. Taking up and disposition of estrays — advertisement. (1) A stock inspector authorized by the department shall take into possession an estray found in the stock inspector's district and, except as provided in 81-2-120, shall either:

(a) ship or arrange for the shipment of the estray to a licensed livestock market for sale; or

(b) hold the estray and care for the estray in the cheapest and most practicable manner for at least 10 days and not more than 30 days after public notice is published as provided in subsection (2). During the holding period, the stock inspector shall advertise that the estray is being held and that unless the estray is claimed by the owner, the stock inspector will on a date specified in the notice sell the estray at a public auction to the highest bidder for cash.

(2) The notice must be published in the newspaper doing the county printing of the county in which the estray is found and on the department's website and in each livestock market brand office and county sheriff's office in the state. This notice must be published in the newspaper at least one time and must contain a statement of the date of the sale, the place where the sale is to be held, and a general description of the estray, including the sex and the approximate age, together with an illustration of the brand and the position of the brand on the estray and a description of the place or locality where the estray was found or taken.

(3) Except as provided in 81-2-120, the proceeds from the sale must be disposed of under 81-4-605 and 81-4-606.

(4) The owner of the estray may appear and claim it at any time before the sale or shipment, as provided in this part, upon payment to the department of the cost of caring for the estray as determined by the department.

History: En. Sec. 2, Ch. 34, L. 1915; re-en. Sec. 3334, R.C.M. 1921; re-en. Sec. 3334, R.C.M. 1935; amd. Sec. 1, Ch. 34, L. 1943; amd. Sec. 134, Ch. 310, L. 1974; R.C.M. 1947, 46-1002; amd. Sec. 17, Ch. 166, L. 1989; amd. Sec. 2666, Ch. 56, L. 2009; amd. Sec. 1, Ch. 269, L. 2009; amd. Sec. 6, Ch. 403, L. 2011.

81-4-604. Sale at public auction — branding. On the date specified in the notice provided for in 81-4-603, the stock inspector shall sell the estray at a public auction to the highest bidder for cash. Before removal from the sale, the stock inspector shall brand the estray with the recorded estray brand of the department.

History: En. Sec. 3, Ch. 34, L. 1915; re-en. Sec. 3335, R.C.M. 1921; re-en. Sec. 3335, R.C.M. 1935; amd. Sec. 135, Ch. 310, L. 1974; R.C.M. 1947, 46-1003.

81-4-605. Expenses, how paid — disposition of proceeds of sale. (1) Expenses for collecting, holding, advertising, and selling of the estray, including but not limited to labor, feed, supplies, and veterinary services, shall be paid out of the gross proceeds of the sale of the estray, and the balance of the proceeds of the sale shall be forwarded to the department to be advertised as estray funds in the manner provided by law. The proceeds are subject to claim by the owner of the animal for a period of 2 years from the date of the sale. If the owner of the estray claims the animal before the sale of the animal, the expense incurred by the stock inspector to that time shall be paid by the owner.

(2) The department may adopt rules and establish fees for the handling of estrays.

History: En. Sec. 4, Ch. 34, L. 1915; re-en. Sec. 3336, R.C.M. 1921; re-en. Sec. 3336, R.C.M. 1935; amd. Sec. 136, Ch. 310, L. 1974; R.C.M. 1947, 46-1004; amd. Sec. 1, Ch. 34, L. 1979; amd. Sec. 12, Ch. 444, L. 1983.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

Seizure and sale of hides when ownership cannot be determined — disposition of proceeds, 81-9-403.

81-4-606. Publication of description of estrays sold — disposition of proceeds remaining in state treasury. A full description of estrays for which the proceeds derived from the sale remains in the hands of the treasurer unclaimed shall be published for the period of two consecutive weekly, semimonthly, or monthly issues after May 1 of each year in not more than four weekly, semimonthly, or monthly publications in this state. The publications shall be designated by the department, and when the publication has been made and the proceeds from the sale of the estrays has remained in the hands of the state treasurer for a period of 2 years, it shall be, by the treasurer, upon request of the department, immediately placed to the credit of the state special revenue fund for the use of the department.

History: En. Sec. 5, Ch. 2, L. 1911; amd. Sec. 1, Ch. 20, L. 1919; re-en. Sec. 3338, R.C.M. 1921; amd. Sec. 1, Ch. 63, L. 1927; re-en. Sec. 3338, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1941; amd. Sec. 107, Ch. 147, L. 1963; amd. Sec. 138, Ch. 310, L. 1974; R.C.M. 1947, 46-1006; amd. Sec. 1, Ch. 277, L. 1983.

81-4-607. Repealed. Sec. 21, Ch. 166, L. 1989.

History: En. Sec. 1, Ch. 94, L. 1907; Sec. 1820, Rev. C. 1907; re-en. Sec. 3341, R.C.M. 1921; amd. Sec. 1, Ch. 29, L. 1923; re-en. Sec. 3341, R.C.M. 1935; amd. Sec. 1, Ch. 137, L. 1943; amd. Sec. 1, Ch. 99, L. 1957; amd. Sec. 139, Ch. 310, L. 1974; R.C.M. 1947, 46-1008.

81-4-608. Repealed. Sec. 21, Ch. 166, L. 1989.

History: En. Sec. 2, Ch. 94, L. 1907; Sec. 1821, Rev. C. 1907; re-en. Sec. 3342, R.C.M. 1921; re-en. Sec. 3342, R.C.M. 1935; R.C.M. 1947, 46-1010.

81-4-609. Repealed. Sec. 21, Ch. 166, L. 1989.

History: En. Sec. 3, Ch. 94, L. 1907; Sec. 1822, Rev. C. 1907; re-en. Sec. 3343, R.C.M. 1921; re-en. Sec. 3343, R.C.M. 1935; amd. Sec. 140, Ch. 310, L. 1974; amd. Sec. 44, Ch. 12, L. 1977; R.C.M. 1947, 46-1011.

81-4-610. Repealed. Sec. 21, Ch. 166, L. 1989.

History: En. Sec. 4, Ch. 94, L. 1907; Sec. 1823, Rev. C. 1907; re-en. Sec. 3344, R.C.M. 1921; re-en. Sec. 3344, R.C.M. 1935; amd. Sec. 141, Ch. 310, L. 1974; R.C.M. 1947, 46-1012.

81-4-611 through 81-4-620 reserved.

81-4-621. Penalties. A person who, for that person's own use or benefit and without the owner's consent, takes into possession any estray shall be guilty of a misdemeanor punishable as provided in 46-18-212.

History: (1)En. Sec. 2, Ch. 169, L. 1921; re-en. Sec. 3340, R.C.M. 1921; re-en. Sec. 3340, R.C.M. 1935; Sec. 46-1007, R.C.M. 1947; (2)En. Sec. 2, Ch. 29, L. 1923; re-en. Sec. 3341.1, R.C.M. 1935; Sec. 46-1009, R.C.M. 1947; (3)En. Sec. 5, Ch. 94, L. 1907; Sec. 1824, Rev. C. 1907; re-en. Sec. 3345, R.C.M. 1921; re-en. Sec. 3345, R.C.M. 1935; Sec. 46-1013, R.C.M. 1947; R.C.M. 1947, 46-1007, 46-1009, 46-1013; amd. Sec. 55, Ch. 557, L. 1987; amd. Sec. 18, Ch. 166, L. 1989; amd. Sec. 4, Ch. 92, L. 1995.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

CHAPTER 5
UNLAWFUL TRANSPORTING OR DRIVING OF LIVESTOCK

Part 1 — Unlawful Driving of Animals

81-5-101. Moving livestock from customary range forbidden.
81-5-102. Driving animals upon railroad track.

81-5-103. Abandonment of sheep — penalty.
81-5-104. Stolen livestock — seizure and forfeiture of vehicle and certain other property used in theft or transportation.
81-5-105. Repealed.
81-5-106. Renumbered 81-5-110.
81-5-107. Renumbered 81-5-111.
81-5-108. Answer to allegations concerning use of property.
81-5-109. Presumption — hearing — disposition of vehicle and other property.
81-5-110. Sale at public auction — retention of property.
81-5-111. Disposition of proceeds.
81-5-112. Permit system for transportation of sheep — penalty.
81-5-113 through 81-5-120 reserved.
81-5-121. Permit and inspection system for transportation of bison.

Part 2 — Transportation of Sheep (Repealed)

Chapter Cross-References

Control of livestock on highway emergency area, 7-14-2129.
Control of movement of livestock on or near county roads, 7-14-2130.
Establishment and alteration of stock lanes, 7-14-2621.
Employment of stock inspector, 7-21-3211 and 7-21-3212.
Acquisition of highways property — stock lanes or trails affected, 60-4-103.
Livestock on highways, Title 60, ch. 7.
Motor vehicles — operation of motor vehicles transporting stock directly across highways — traffic regulation and vehicle equipment, 61-8-101, 61-9-101.
Special fees — livestock hauling vehicles — certain farm vehicles, 61-10-206.
Unlawful use of aircraft, 67-1-204.
Transportation and protection of livestock by railroads, Title 69, ch. 14, part 7.
Effect of designation or acquisition of "natural areas", 76-12-111.
Rangeland resources, Title 76, ch. 14.
Grazing districts, Title 76, ch. 16.
Agricultural and grazing leases — state lands, Title 77, ch. 6.

Part 1
Unlawful Driving of Animals

Part Cross-References

Use of snowmobiles controlled, 23-2-633.

81-5-101. Moving livestock from customary range forbidden. (1) A person who willfully moves or causes to be moved any cattle, horses, mules, swine, llamas, alpacas, domestic bison, or sheep from their owner's customary range without the permission of the owner shall upon conviction be punished by imprisonment in the county jail not exceeding 6 months or by a fine not exceeding $500, or both.

(2) A person who negligently moves or causes to be moved any cattle, horses, mules, swine, llamas, alpacas, domestic bison, or sheep from their owner's customary range without the permission of the owner shall upon conviction be punished by:

(a) a term of imprisonment in the county jail not to exceed 6 months;

(b) a fine not exceeding:

(i) $25 for a first offense;

(ii) $250 for a second offense; and

(iii) $500 for a third or subsequent offense; or

(c) both imprisonment and the appropriate fine.

(3) Prior to the imposition of the penalty provided for in subsection (1) or (2), the owner of the livestock shall file a complaint with the department. The department shall conduct an investigation to determine the circumstances under which the livestock were moved.

History: En. Sec. 1, Ch. 60, L. 1919; re-en. Sec. 11549, R.C.M. 1921; re-en. Sec. 11549, R.C.M. 1935; Sec. 94-3568, R.C.M. 1947; redes. 46-3002 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 46-3002; amd. Sec. 1, Ch. 18, L. 1983; amd. Sec. 19, Ch. 166, L. 1989; amd. Sec. 12, Ch. 417, L. 1993; amd. Sec. 5, Ch. 92, L. 1995; amd. Sec. 7, Ch. 403, L. 2011.

81-5-102. Driving animals upon railroad track. If a person willfully drives an animal upon a railroad track with intent to injure the corporation or persons owning the railroad and such animal is killed or injured thereby, the person is punishable by a fine not exceeding $50,000

or imprisonment in the state prison not exceeding 5 years, or both, and is liable for all injury or damage occasioned by reason of such act.

History: Ap. p. Sec. 1191, Pen. C. 1895; re-en. Sec. 8865, Rev. C. 1907; re-en. Sec. 11555, R.C.M. 1921; re-en. Sec. 11555, R.C.M. 1935; redes. 46-3003 by Sec. 29, Ch. 513, L. 1973; Sec. 46-3003, R.C.M. 1947; Ap. p. Sec. 724, 5th Div. Comp. Stat. 1887; amd. Sec. 957, Civ. C. 1895; re-en. Sec. 4316, Rev. C. 1907; re-en. Sec. 6547, R.C.M. 1921; re-en. Sec. 6547, R.C.M. 1935; Sec. 72-408, R.C.M. 1947; R.C.M. 1947, 46-3003, 72-408; amd. Sec. 4, Ch. 14, L. 1979; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Protection of livestock and agricultural resources, Title 69, ch. 14, part 7.

81-5-103. Abandonment of sheep — penalty. A person who has, by virtue of employment as herder, driver, or otherwise, the charge or custody of sheep and who willfully abandons the sheep or allows them to stray from the person's charge or custody shall, upon conviction, be punished by a fine of not less than $100, by imprisonment of not less than 3 months or more than 1 year, or by both. However, if the person who has charge or custody of the sheep gave the owner of the sheep or the owner's authorized agent at least 5 days' notice of the intention to quit employment, the person may not be considered to have abandoned the sheep, within the meaning of this section, by leaving the sheep after the expiration of the period.

History: En. Sec. 1, Ch. 116, L. 1909; re-en. Sec. 11550, R.C.M. 1921; re-en. Sec. 11550, R.C.M. 1935; Sec. 94-35-200, R.C.M. 1947; redes. 46-3004 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 46-3004; amd. Sec. 2667, Ch. 56, L. 2009.

81-5-104. Stolen livestock — seizure and forfeiture of vehicle and certain other property used in theft or transportation. (1) The use of a vehicle, money, equipment, or personalty for the theft or transportation of a stolen mule, horse, mare, colt, foal, filly, sheep, lamb, cow, calf, heifer, steer, bull, llama, alpaca, domestic bison, hogs, poultry, ostrich, rhea, emu, or the products of stolen livestock is unlawful. Any vehicle, money, equipment, or personalty used for the theft or unlawful transportation or upon probable cause believed to be devoted wholly or in part to the theft or unlawful transportation must be seized and held.

(2) Within 45 days after the seizure, a peace officer or officer of the agency that seizes the property shall file a petition to institute forfeiture proceedings with the clerk of the district court of the county in which the seizure occurs. The clerk shall issue a summons at the request of the petitioning party, who shall serve the summons upon all owners or claimants of the property by one of the following methods:

(a) upon an owner or claimant whose address is known, by personal service of a copy of the petition and summons as provided in the Montana Rules of Civil Procedure;

(b) upon an owner or claimant whose address is unknown but who is believed to have an interest in the property, by publication of the summons in one issue of a newspaper of general circulation in the county where the seizure occurred or, if there is no newspaper of general county circulation, by publication in one issue of a newspaper of general circulation in an adjoining county and by mailing a copy of the petition and summons to the most recent address of the owner or claimant, if any, shown in the records of the division of motor vehicles.

(3) A vehicle is not subject to forfeiture under this section if:

(a) it is a stolen vehicle at the time it is used for unlawful transportation; or

(b) the vehicle owner is not in collusion with the party or parties guilty of the theft.

History: En. Sec. 1, Ch. 80, L. 1931; re-en. Sec. 11552.1, R.C.M. 1935; amd. Sec. 1, Ch. 132, L. 1963; Sec. 94-35-204, R.C.M. 1947; redes. 46-3005 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 46-3005; amd. Sec. 4, Ch. 563, L. 1985; amd. Sec. 20, Ch. 166, L. 1989; amd. Sec. 1, Ch. 108, L. 1993; amd. Sec. 13, Ch. 417, L. 1993; amd. Sec. 10, Ch. 206, L. 1995; amd. Sec. 8, Ch. 403, L. 2011.

81-5-105. Repealed. Sec. 9, Ch. 563, L. 1985.

History: En. Sec. 3, Ch. 80, L. 1931; re-en. Sec. 11552.3, R.C.M. 1935; Sec. 94-35-206, R.C.M. 1947; redes. 46-3007 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 57, Ch. 12, L. 1977; R.C.M. 1947, 46-3007.

81-5-106. Renumbered 81-5-110. Code Commissioner, 1985.

81-5-107. Renumbered 81-5-111. Code Commissioner, 1985.

81-5-108. Answer to allegations concerning use of property. Within 20 days after the service of the petition and summons or publication of the summons, as provided in 81-5-104, the owner or claimant of the seized property shall file a verified answer to the allegations concerning the use of the property contained in the petition to institute forfeiture proceedings. Only one

20-day extension of the time for filing the answer may be granted, and failure to answer within 20 days or within the 20-day extension bars the owner or claimants from presenting evidence at any subsequent evidentiary hearing unless extraordinary circumstances exist.

History: En. Sec. 5, Ch. 563, L. 1985.

81-5-109. Presumption — hearing — disposition of vehicle and other property. (1) There is a rebuttable presumption of forfeiture as to all property used for the theft or transportation of the livestock as provided in 81-5-104.

(2) If a verified answer to the petition is not filed within 20 days after the service of the petition and summons, the court upon motion shall order the property forfeited to the state.

(3) If a verified answer is filed within 20 days, a hearing on the petition for forfeiture must be set without a jury not less than 60 days after the answer is filed. Notice of the hearing must be given in the manner provided for service of petition and summons.

(4) If the court finds that a vehicle, money, equipment, or personalty was not used for the purpose charged or that it was used without the consent or knowledge of the owner, it shall order the property released to the owner of record on the date of the seizure. If the court finds that the vehicle, money, equipment, or personalty was used for the purpose charged and was used with the knowledge and consent of the owner, the property must be ordered forfeited.

History: En. Sec. 6, Ch. 563, L. 1985; amd. Sec. 2, Ch. 108, L. 1993.

Cross-References

Disputable presumptions, 26-1-602.

81-5-110. Sale at public auction — retention of property. (1) Vehicles, equipment, and personalty forfeited under 81-5-109 may be sold at public auction in the manner of sales of personal property under execution and may be sold by any sheriff, livestock inspector, or other peace officer.

(2) The department may retain the vehicles, equipment, and personalty forfeited under 81-5-109 for official use by the department, including personnel training. If the department retains forfeited property that it determines to be suitable for everyday use by department personnel, the department shall reduce similar property purchases accordingly.

(3) Money forfeited under 81-5-109 must be deposited in the state general fund.

History: En. Sec. 4, Ch. 80, L. 1931; re-en. Sec. 11552.4, R.C.M. 1935; Sec. 94-35-207, R.C.M. 1947; redes. 46-3008 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 46-3008; amd. Sec. 7, Ch. 563, L. 1985; Sec. 81-5-106, MCA 1983; redes. 81-5-110 by Code Commissioner, 1985; amd. Sec. 3, Ch. 108, L. 1993; amd. Sec. 7, Ch. 554, L. 2001.

Cross-References

Sale on execution, Title 25, ch. 13, part 7.

81-5-111. Disposition of proceeds. (1) After deducting the expenses of retaining the vehicle, equipment, or personalty and the cost of the sale, the officer making the sale or the department, if it retains the vehicle, equipment, or personalty, shall pay all liens to the extent that the balance of sale proceeds permit, according to the lien priorities that are established by intervention or otherwise. A lien must be bona fide and have been created without the lienor having any notice or reasonable cause to believe that the vehicle, equipment, or personalty was being or was to be used for the theft or illegal transportation.

(2) The proceeds from the sale of vehicles, equipment, and personalty provided for in 81-5-110 must be deposited in the state general fund.

History: En. Sec. 2, Ch. 80, L. 1931; re-en. Sec. 11552.2, R.C.M. 1935; Sec. 94-35-205, R.C.M. 1947; redes. 46-3006 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 200, Ch. 310, L. 1974; R.C.M. 1947, 46-3006; Sec. 81-5-107, MCA 1983; redes. 81-5-111 by Code Commissioner, 1985; amd. Sec. 4, Ch. 108, L. 1993; amd. Sec. 8, Ch. 554, L. 2001.

Cross-References

Department of Livestock fund, 17-2-106.

Liens — general provisions, Title 71, ch. 3, part 1.

81-5-112. Permit system for transportation of sheep — penalty. (1) The department shall adopt rules imposing a permit system for the transportation of sheep within or out of the state if it finds that a permit system is necessary to prevent theft of sheep. The rules must establish fees commensurate with the department's cost of operating the permit system.

(2) A person who purposely or knowingly transports sheep in violation of rules adopted under subsection (1) is guilty of a misdemeanor and shall be punished by a fine not exceeding $1,000 or imprisonment in the county jail for a term not exceeding 6 months, or both.

History: En. Sec. 1, Ch. 175, L. 1989.

81-5-113 through 81-5-120 reserved.

81-5-121. Permit and inspection system for transportation of bison. (1) Except as otherwise provided by law, the department shall adopt rules imposing a permit and inspection system for the transportation of bison into and out of counties and into and out of the state for the purposes of tracking movement of animals and collecting per capita assessments.

(2) A person who purposely or knowingly transports bison in violation of rules adopted pursuant to this section is guilty of a misdemeanor and shall be fined not more than $1,000 or be imprisoned in the county jail for not more than 6 months, or both.

History: En. Sec. 1, Ch. 403, L. 2011.

Part 2
Transportation of Sheep
(Repealed)

81-5-201. Repealed. Sec. 2, Ch. 175, L. 1989.

History: (1)En. Sec. 1, Ch. 135, L. 1963; amd. Sec. 110, Ch. 310, L. 1974; Sec. 46-809, R.C.M. 1947; (2)En. Sec. 2, Ch. 135, L. 1963; amd. Sec. 111, Ch. 310, L. 1974; Sec. 46-810, R.C.M. 1947; R.C.M. 1947, 46-809, 46-810.

81-5-202. Repealed. Sec. 2, Ch. 175, L. 1989.

History: En. Sec. 3, Ch. 135, L. 1963; amd. Sec. 112, Ch. 310, L. 1974; R.C.M. 1947, 46-811; amd. Sec. 13, Ch. 444, L. 1983.

81-5-203. Repealed. Sec. 2, Ch. 175, L. 1989.

History: En. Sec. 4, Ch. 135, L. 1963; amd. Sec. 113, Ch. 310, L. 1974; R.C.M. 1947, 46-812.

81-5-204. Repealed. Sec. 2, Ch. 175, L. 1989.

History: En. Sec. 5, Ch. 135, L. 1963; amd. Sec. 114, Ch. 310, L. 1974; R.C.M. 1947, 46-813.

CHAPTER 6
LIVESTOCK PROTECTIVE ASSOCIATIONS

Part 1 — Livestock Protective Committees

81-6-101. Petition for county livestock protective committee — members — term.
81-6-102. Organization of committee — officers — meetings.
81-6-103. Powers and duties of committee.
81-6-104. Fee — special fund.
81-6-105. Special livestock deputy — duties — compensation.
81-6-106. Discontinuing county livestock protective committee.
81-6-107. Cooperation with committee by adjoining county.
81-6-108. County participation in defraying part of administrative expenses.

Part 2 — Cattle Protective Districts

81-6-201. Formation of districts in two or more counties authorized — petition of cattle owners — declaration by county commissioners.
81-6-202. Selection of cattle protective committee members.
81-6-203. Powers and duties of protective committees.
81-6-204. Fee — deposit of proceeds — multiple-county district.
81-6-205. Removal of area from protective district — discontinuance of district — fee saved.
81-6-206. Formation of county district authorized — petition of cattle owners — declaration by county commissioners.
81-6-207. Selection of cattle protective committee members.
81-6-208. Powers and duties of protective committees.
81-6-209. Fee — deposit of proceeds — single-county district.
81-6-210. Discontinuance of district — fee saved.

Part 3 — Livestock Crimestoppers

81-6-301. Short title.
81-6-302. Definitions.
81-6-303 through 81-6-310 reserved.
81-6-311. Repealed.
81-6-312. Repealed.
81-6-313. Powers and duties of department — rules.
81-6-314. Confidentiality.

Chapter Cross-References

Special levies on commodities for livestock protection, Art. XII, sec. 1, Mont. Const.

Employment of stock inspectors by Board of County Commissioners, 7-21-3211.

County control of dogs harassing or injuring livestock, 7-23-2109.

Livestock per capita tax levy, 15-24-921.

Highway patrol officers' authority to stop livestock or livestock products in transit — suspicion of stolen goods, 44-1-1004.

Part 1
Livestock Protective Committees

81-6-101. Petition for county livestock protective committee — members — term. (1) The board of county commissioners shall, upon receipt of a petition or petitions to do so, set up a county livestock protective committee of three members. The petition or petitions must be signed by at least 51% of the owners of cattle in the county, and at least 55% of the cattle in the county must be owned by the petitioners.

(2) Members appointed to serve on the committee must be residents of the county engaged in the business of raising cattle. If there is in the county any organization of cattle growers, the county commissioners shall give preference to names submitted by the group for appointment to the committee. The term for which the committee members are appointed is 2 years, with two members of the first committee named to serve for 2 years and one member to serve for 1 year. Members of the committee may not receive remuneration or reimbursement for expenses for serving on the committee.

(3) As used in this section, "organization of cattle growers" means any group or organization holding regular meetings at least annually, having officers, and composed predominantly of cattle growers resident in the county, with its membership open to cattle growers willing to abide by its governing rules or bylaws. The general purpose of the organization must be the promotion of the interests of its members in matters pertaining to the cattle or livestock industry.

(4) If the owners of sheep in the county desire to come under the provisions of this part in cooperation with owners of cattle, they shall file a petition meeting the requirements of subsection (1) with the county commissioners, and in that case, at least one member of the livestock protective committee must be a sheep grower and where the word "cattle" appears in this part, it includes the word "sheep".

(5) Owners of sheep may form a county livestock protective committee, in which case the word "cattle" as used in this part is considered to mean "sheep".

History: **En. Sec. 1, Ch. 168, L. 1953; R.C.M. 1947, 46-2701; amd. Sec. 6, Ch. 660, L. 1987; amd. Sec. 225, Ch. 574, L. 2001.**

Cross-References

Selection of Cattle Protective Committee members, 81-6-202, 81-6-207.

81-6-102. Organization of committee — officers — meetings. The county livestock protective committee shall upon appointment and annually after appointment organize by election of a presiding officer and a secretary. Meetings of the committee must be held at the call of the presiding officer or any two members of the committee. Minutes of all meetings of the committee must be kept by the secretary. The minutes must be presented at the ensuing meeting of the committee and upon approval must be signed by the presiding officer and secretary and immediately deposited with the county clerk and recorder and kept available for public inspection.

History: **En. Sec. 2, Ch. 168, L. 1953; R.C.M. 1947, 46-2702; amd. Sec. 2668, Ch. 56, L. 2009.**

81-6-103. Powers and duties of committee. The county livestock protective committee shall advise, assist, and cooperate with the department of livestock, the board of county commissioners, the sheriff, and all other public officials or police officers who have duties pertaining to hide and brand inspection, apprehension of livestock rustlers, the prevention of rustling, enforcement of laws governing the movement and sale of livestock, the treatment and prevention of livestock diseases, and other matters which are of interest and value to the livestock industry in the county.

History: **En. Sec. 3, Ch. 168, L. 1953; amd. Sec. 180, Ch. 310, L. 1974; R.C.M. 1947, 46-2703.**

Cross-References

Authority concerning livestock or livestock products in transit, 44-1-1004.
Illegal branding or altering or obscuring of brand, 45-6-327.
Disease control — powers of Department, 81-2-102.
Duties of state stock inspectors and deputy stock inspectors, 81-3-203.

81-6-104. Fee — special fund. The county livestock protective committee may recommend to the board of county commissioners the imposition of a fee in an amount not to exceed $1 per head on all cattle 9 months of age or older in the county on the regular assessment date of each year as provided in 15-24-903, and the board of county commissioners shall impose the fee. The fee must be collected and deposited by the county treasurer in a special fund to be known as the livestock special deputy fund, together with any other funds made available from county, state, federal, or private sources for the purposes of this part.

History: En. Sec. 4, Ch. 168, L. 1953; amd. Sec. 1, Ch. 10, L. 1955; amd. Sec. 4, Ch. 388, L. 1975; R.C.M. 1947, 46-2704; amd. Sec. 1, Ch. 258, L. 1979; amd. Sec. 7, Ch. 660, L. 1987; amd. Sec. 226, Ch. 574, L. 2001; amd. Sec. 1, Ch. 27, L. 2013; amd. Sec. 1, Ch. 40, L. 2015.

Cross-References

Department of Agriculture, Art. XII, sec. 1, Mont. Const.
Tax provisions relating to livestock, 15-1-101; 15-6-207; 15-7-202; 15-8-201; 15-24-301; 15-24-302; Title 15, ch. 24, part 9; 15-30-2501.
Individual income tax provisions relating to livestock — definitions, 15-30-2501.

81-6-105. Special livestock deputy — duties — compensation. The county livestock protective committee may recommend to the board of county commissioners the appointment of a special livestock deputy, satisfactory to the department and the sheriff, whose duties are to assist the department and the sheriff in the enforcement of hide and brand inspection laws, laws governing the movement and sale of livestock and the treatment and prevention of livestock diseases, laws pertaining to the apprehension of livestock rustlers and the prevention of rustling, and other laws that are of particular concern to the livestock industry of the county, particularly with regard to cattle. The special livestock deputy may receive a commission from the department and appointment as a deputy from the sheriff of the county and shall give the same bond for the faithful performance of the duties as the bond required from officers performing similar duties. The special livestock deputy must receive compensation for services and for mileage traveled in the performance of the special livestock deputy's duties in an amount set by the board of county commissioners on the recommendation of the committee, to be paid from the livestock special deputy fund and from the county general fund in the proportions set by the board of county commissioners.

History: En. Sec. 5, Ch. 168, L. 1953; amd. Sec. 181, Ch. 310, L. 1974; R.C.M. 1947, 46-2705; amd. Sec. 127, Ch. 114, L. 2003.

Cross-References

Qualifications of Deputy Sheriff, 7-32-2104.
Illegal branding or altering or obscuring of brand, 45-6-327.
Disease control — powers of Department, 81-2-102.
Duties of state stock inspectors and deputy stock inspectors, 81-3-203.

81-6-106. Discontinuing county livestock protective committee. Upon receipt of a petition or petitions signed as provided in 81-6-101, the board of county commissioners shall discontinue a county livestock protective committee. The discontinuance of the committee does not affect any fee imposed prior to the receipt of the petition or petitions and the proceeds of any fee imposed must be used for the purposes of this part. A district may not be discontinued as long as there is any outstanding indebtedness against it.

History: En. Sec. 6, Ch. 168, L. 1953; amd. Sec. 2, Ch. 204, L. 1967; R.C.M. 1947, 46-2706; amd. Sec. 227, Ch. 574, L. 2001.

81-6-107. Cooperation with committee by adjoining county. The board of county commissioners of any county adjoining a county availing itself of the provisions of this part may cooperate in the administration of this part.

History: En. Sec. 7, Ch. 168, L. 1953; R.C.M. 1947, 46-2707.

Cross-References

Interlocal agreements, Title 7, ch. 11, part 1.

81-6-108. County participation in defraying part of administrative expenses. Nothing in this part shall be construed to limit or deprive the board of county commissioners to participate in defraying a part of the expense of the administration of this part.

History: En. Sec. 8, Ch. 168, L. 1953; R.C.M. 1947, 46-2708.

Part 2
Cattle Protective Districts

81-6-201. Formation of districts in two or more counties authorized — petition of cattle owners — declaration by county commissioners. A cattle protective district embracing all or parts of two or more counties may be formed upon the filing of petitions by the cattle growers of such counties with the boards of county commissioners of each county to be wholly or partially included in the district. Such petitions must be signed by at least 51% of the cattle owners owning 55% of cattle for the protection of which the district is to be formed residing within the area designated as part of the district in each of the counties affected. Upon receipt of such a petition, each board of county commissioners must within 30 days declare the designated portion of its county a part of such cattle protective district, and the district shall be formed immediately upon the action of the last board of county commissioners to act.

History: En. Sec. 1, Ch. 181, L. 1963; R.C.M. 1947, 46-2801.

Cross-References

Interlocal agreements, Title 7, ch. 11, part 1.

81-6-202. Selection of cattle protective committee members. Each county wholly or partially included in such district shall be entitled to three members of the district cattle protective committee who shall be chosen in the same manner as members of county cattle protective committees under 81-6-101.

History: En. Sec. 2, Ch. 181, L. 1963; R.C.M. 1947, 46-2802.

81-6-203. Powers and duties of protective committees. District cattle protective committees shall be organized and have the same powers and duties as the county cattle protective committees organized under the provisions of part 1 of this chapter.

History: En. Sec. 3, Ch. 181, L. 1963; R.C.M. 1947, 46-2803.

81-6-204. Fee — deposit of proceeds — multiple-county district. The district cattle protective committee may recommend to the board of county commissioners the imposition of a fee in an amount not to exceed $1 per head on all cattle 9 months of age or older in the district on the regular assessment date of each year as provided in 15-24-903, and the board of county commissioners shall impose the fee. The fee must be collected and deposited in the county treasury of one of the counties in the district, selected by the district cattle protective committee, in a special fund to be known as the livestock special deputy fund, together with any other funds made available from county, state, federal, or private sources for the purposes of this part.

History: En. Sec. 4, Ch. 181, L. 1963; amd. Sec. 5, Ch. 388, L. 1975; R.C.M. 1947, 46-2804; amd. Sec. 2, Ch. 258, L. 1979; amd. Sec. 8, Ch. 660, L. 1987; amd. Sec. 228, Ch. 574, L. 2001; amd. Sec. 2, Ch. 27, L. 2013; amd. Sec. 2, Ch. 40, L. 2015.

Cross-References

Agriculture, Art. XII, sec. 1, Mont. Const.

81-6-205. Removal of area from protective district — discontinuance of district — fee saved. Upon receipt of a petition or petitions signed in the same number and the same manner as the petition to form the district provided for in 81-6-201, a board of county commissioners shall remove the area in its county from the cattle protective district or the boards of county commissioners of all of the counties affected may discontinue the entire cattle protective district. The discontinuance of a district or part of a district does not affect any fee imposed prior to the receipt of the petition or petitions and the proceeds of any fee imposed must be used for the purposes of this part. A district or portion of a district may not be discontinued as long as there is any outstanding indebtedness against it.

History: En. Sec. 5, Ch. 181, L. 1963; amd. Sec. 1, Ch. 204, L. 1967; R.C.M. 1947, 46-2805; amd. Sec. 229, Ch. 574, L. 2001.

81-6-206. Formation of county district authorized — petition of cattle owners — declaration by county commissioners. A cattle protective district embracing part of one county in the state of Montana may be formed upon the filing of a petition by cattle growers within said district with the board of county commissioners in said county. Such petition must be signed by at least 51% of the cattle owners owning 55% of the cattle for the protection of which the district is to be formed residing within the area designated. Upon receipt of such petition, the board of county commissioners must within 30 days declare the designated portion of its county a cattle protective district and the district shall be formed immediately thereafter.

History: En. Sec. 1, Ch. 91, L. 1965; R.C.M. 1947, 46-2806.

81-6-207. Selection of cattle protective committee members. Each cattle protective district shall be entitled to three members, who shall be chosen in the same manner as members of a county cattle protective committee under 81-6-101.

History: En. Sec. 2, Ch. 91, L. 1965; R.C.M. 1947, 46-2807.

81-6-208. Powers and duties of protective committees. Such district cattle protective committees shall be organized and have the same powers and duties as the county cattle protective committees organized under the provisions of part 1 of this chapter.

History: En. Sec. 3, Ch. 91, L. 1965; R.C.M. 1947, 46-2808.

81-6-209. Fee — deposit of proceeds — single-county district. The district cattle protective committee may recommend to the board of county commissioners the imposition of a fee in an amount not to exceed $1 per head on all cattle 9 months of age or older in the district on the regular assessment date of each year as provided in 15-24-903, and the board of county commissioners shall impose the fee. The fee must be collected and deposited in the county treasury in a special fund to be known as the livestock special deputy fund, together with any other funds made available from county, state, federal, or private sources for the purposes of this part.

History: En. Sec. 4, Ch. 91, L. 1965; amd. Sec. 6, Ch. 388, L. 1975; R.C.M. 1947, 46-2809; amd. Sec. 3, Ch. 258, L. 1979; amd. Sec. 9, Ch. 660, L. 1987; amd. Sec. 230, Ch. 574, L. 2001; amd. Sec. 3, Ch. 27, L. 2013; amd. Sec. 3, Ch. 40, L. 2015.

81-6-210. Discontinuance of district — fee saved. Upon receipt of a petition or petitions signed in the same number and in the same manner as the petition to form the district, the board of county commissioners shall discontinue the cattle protective district. The discontinuance of the district does not affect any fee imposed prior to the receipt of the petition or petitions, and the proceeds of any fee imposed must be used for the purposes of this part. A district or portion of a district may not be discontinued as long as there is any outstanding indebtedness against it.

History: En. Sec. 5, Ch. 91, L. 1965; amd. Sec. 3, Ch. 204, L. 1967; R.C.M. 1947, 46-2810; amd. Sec. 231, Ch. 574, L. 2001.

Part 3
Livestock Crimestoppers

81-6-301. Short title. This part may be cited as the "Livestock Crimestoppers Act".

History: En. Sec. 1, Ch. 571, L. 1983.

81-6-302. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of livestock created in Title 2, chapter 15, part 31.

(2) "Livestock" includes ostriches, rheas, and emus in addition to other livestock.

(3) "Program" means the livestock crimestoppers program created under 81-6-313.

History: En. Sec. 2, Ch. 571, L. 1983; amd. Sec. 11, Ch. 206, L. 1995; amd. Sec. 1, Ch. 99, L. 2023.

81-6-303 through 81-6-310 reserved.

81-6-311. Repealed. Sec. 3, Ch. 99, L. 2023.

History: En. Sec. 5, Ch. 571, L. 1983.

81-6-312. Repealed. Sec. 3, Ch. 99, L. 2023.

History: En. Sec. 4, Ch. 571, L. 1983.

81-6-313. Powers and duties of department — rules. (1) The department may:

(a) create, maintain, and promote a statewide livestock crimestoppers program in order to assist law enforcement agencies in detecting and combating livestock-related crimes;

(b) advise and assist in the creation and maintenance of local programs;

(c) encourage the channeling of information from the programs to law enforcement agencies;

(d) foster the detection of livestock-related crimes by the public;

(e) encourage the public, through a reward program or otherwise, to provide information that assists in the prosecution of livestock-related crimes;

(f) promote the state and local programs through the media;

(g) accept gifts, grants, or donations for the furtherance of the program and spend these in compliance with the conditions of the gifts, grants, or donations; and

(h) adopt rules necessary to administer the provisions of this part.

(2) The department shall recommend to the board of livestock:

(a) the names of individuals to be rewarded for providing information used in detecting and combating livestock-related crimes;

(b) the amount of any reward recommended; and

(c) means for promoting the program.

History: En. Secs. 6, 7, Ch. 571, L. 1983; amd. Sec. 2, Ch. 99, L. 2023.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

81-6-314. Confidentiality. The identity of a person submitting information under the program and any information that may lead to the disclosure of such identity is confidential.

History: En. Sec. 8, Ch. 571, L. 1983.

Cross-References

Right of privacy, Art. II. sec. 10, Mont. Const.

CHAPTER 7
PREDATORY ANIMAL CONTROL

Part 1 — Predatory Animal Control

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81-7-601. Definition.
81-7-602. County commissioners authorized to establish predatory animal control program for protection of cattle.
81-7-603. County commissioners permitted to require per capita license fee on cattle.
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Part 7 — County Predator Control for Protection of Goats

81-7-701. Definitions.
81-7-702. County commissioners authorized to establish predatory animal control program for protection of goats.
81-7-703. County commissioners permitted to require per capita license fee on goats.
81-7-704. Proceeds of furs and skins taken.
81-7-705. Duty of county commissioners — petition of goat owners — license fees.

Chapter Cross-References

Special levies on commodities for predator control, Art. XII, sec. 1, Mont. Const.
County contribution to state special revenue fund for predatory animal control, 7-21-2105.
County agricultural and livestock services, Title 7, ch. 21, part 32.
Livestock per capita tax levy, 15-24-921.
Approval of bounty claims for wild animals, 87-1-206.
Regulation of wild animals damaging property, 87-1-225.
Disposition of meat of animals damaging property, 87-1-226.
Restrictions on use of manned or unmanned aircraft for predator control, 87-3-126.
Use of dogs, traps, and other means, except use of deadfall, in taking stock-killing animals, 87-3-127.
Predatory animals — fur dealers, Title 87, ch. 4, part 3.
Killing of predatory birds destroying livestock permitted, 87-5-209.
Unlawful use of aircraft for hunting, 87-6-208.

Part 1
Predatory Animal Control

81-7-101. Definition. For the purpose of this part, the term "predatory animal" includes coyote, red fox, and any other individual animal causing depredations upon livestock.

History: En. Sec. 1, Ch. 73, L. 1923; re-en. Sec. 3417.1, R.C.M. 1935; amd. Sec. 2, Ch. 27, L. 1974; amd. Sec. 2, Ch. 67, L. 1975; amd. Sec. 5, Ch. 235, L. 1977; R.C.M. 1947, 46-1902; amd. Sec. 1, Ch. 244, L. 1995; amd. Sec. 1, Ch. 316, L. 2001.

81-7-102. Department to supervise destruction of predatory animals — cooperation with other agencies — administration of money. (1) The department shall conduct the destruction and control of predatory animals capable of killing, destroying, maiming, or injuring domestic livestock or domestic poultry and the protection and safeguarding of livestock and poultry in this state against depredations from these animals. The department shall formulate the practical programs for accomplishing these objectives in this state and for

carrying out the programs in an efficient and practical manner responsive to the need for control in each area of this state.

(2) The department shall adopt rules applicable to predatory animal control that are necessary and proper for the systematic destruction of the predatory animals by hunting, trapping, and poisoning operations and payments of bounties. The department shall make field, area, range, or other orders and instructions, including orders and instructions to hunter and trapper personnel and others, that are appropriate in the various areas at different seasons of the year, taking into consideration the habits, presence, migrations, or movements of the animals and their attacks on livestock and poultry, either singly or in packs or bands.

(3) The department shall cooperate with authorized representatives of the federal government, including the biological survey and the fish and wildlife service, the department of fish, wildlife, and parks, boards of county commissioners, voluntary associations of stockgrowers, sheepgrowers, ranchers, farmers, hunters, and anglers, and corporations and individuals, in the systematic destruction of predatory animals by hunting, trapping, and poisoning operations.

(4) Section 81-7-103 and this section do not interfere with or impair the power and duties of the department of fish, wildlife, and parks in the control of predatory animals by the department of fish, wildlife, and parks as authorized by law or the obligation of the department of fish, wildlife, and parks to expend its funds in cooperation with the department for predatory animal control as required by law. Funds of the department of fish, wildlife, and parks for the cooperative predatory animal control must be administered and expended by the department of fish, wildlife, and parks.

History: En. Sec. 2, Ch. 73, L. 1923; re-en. Sec. 3417.2, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1947; amd. Sec. 98, Ch. 147, L. 1963; amd. Sec. 21, Ch. 100, L. 1973; amd. Sec. 3, Ch. 27, L. 1974; amd. Sec. 150, Ch. 310, L. 1974; amd. Sec. 3, Ch. 67, L. 1975; amd. Sec. 6, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 46-1903(1), (3); amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 2, Ch. 244, L. 1995; amd. Sec. 2, Ch. 316, L. 2001; amd. Sec. 2669, Ch. 56, L. 2009.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

Powers and duties of Department of Fish, Wildlife, and Parks, 87-1-201, 87-1-206.

Obligation of Department of Fish, Wildlife, and Parks to expend funds for predatory animal control in cooperation with Department of Livestock, 87-1-206.

81-7-103. Administration of funds by department. Except as provided in 81-7-106(2), the department shall administer and expend for predatory animal control all money that is made available to it, including the money allocated for this purpose under 81-7-104 and all money that is made available to the department by appropriations made by the legislature for predatory animal control by the department. The department shall expend the funds for predatory animal control by all effective means responsive to the necessities of control in various areas of the state, including employment of hunters, trappers, and other personnel, procurement of traps, poisons, equipment, and supplies, and payment of bounties in the discretion of the department at those times of the year it considers advisable.

History: Ap. p. Sec. 2, Ch. 73, L. 1923; re-en. Sec. 3417.2, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1947; amd. Sec. 98, Ch. 147, L. 1963; amd. Sec. 21, Ch. 100, L. 1973; amd. Sec. 3, Ch. 27, L. 1974; amd. Sec. 150, Ch. 310, L. 1974; amd. Sec. 3, Ch. 67, L. 1975; amd. Sec. 6, Ch. 235, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 46-1903, R.C.M. 1947; Ap. p. Sec. 4 1/2, Ch. 73, L. 1923; re-en. Sec. 2081.1, R.C.M. 1935; amd. Sec. 4, Ch. 422, L. 1975; Sec. 84-5215, R.C.M. 1947; R.C.M. 1947, 46-1903(2), 84-5215; amd. Sec. 10, Ch. 660, L. 1987; amd. Sec. 3, Ch. 316, L. 2001; amd. Sec. 9, Ch. 339, L. 2011.

81-7-104. Predator control money — use of proceeds. (1) In addition to the transfer provided for in 15-24-925, the department shall allocate a portion of the money from the fee under 15-24-921 for the purpose of protecting livestock in the state against destruction, depredation, and injury by predatory animals, whether the livestock is on lands in private ownership, in the ownership of the state, or in the ownership of the United States, including open ranges and all lands in or of the public domain. This protection may be by any means of effective predatory animal destruction and control, including systematic hunting and trapping and payment of bounties.

(2) Money may be paid out only on claims presented to the department and approved by the department in accordance with the law applicable either to claims for bounties or for other expenditures for predatory animal control by methods other than payment of bounties, as determined by the department. Money designated for predator control must be available for

the payment of bounty claims and for expenditures for planned, seasonal, or other campaigns directed or operated by the department in cooperation with other agencies for the systematic destruction and control of predatory animals, as determined by the department and its advisory committee. Claims may not be approved in excess of money available for that purpose, and warrants may not be registered against the money.

History: En. Sec. 6, Ch. 127, L. 1915; re-en. Sec. 2081, R.C.M. 1921; amd. Sec. 4, Ch. 73, L. 1923; amd. Sec. 2, Ch. 152, L. 1929; re-en. Sec. 2081, R.C.M. 1935; amd. Sec. 1, Ch. 111, L. 1947; amd. Sec. 103, Ch. 147, L. 1963; amd. Sec. 54, Ch. 100, L. 1973; amd. Sec. 108, Ch. 405, L. 1973; amd. Sec. 3, Ch. 422, L. 1975; amd. Sec. 62, Ch. 566, L. 1977; R.C.M. 1947, 84-5214; amd. Sec. 2, Ch. 445, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 11, Ch. 660, L. 1987; amd. Sec. 3, Ch. 244, L. 1995; amd. Sec. 4, Ch. 316, L. 2001; amd. Sec. 232, Ch. 574, L. 2001; amd. Sec. 10, Ch. 339, L. 2011.

Cross-References

Taxation — collection procedures, 15-24-302.

81-7-105. Disposition of proceeds from sale of skins, hides, and specimens — presenting to museums. Furs, skins, and specimens taken by hunters or trappers shall be sold by the department. The proceeds from the sales shall be credited to the state special revenue fund. The proceeds shall be used to carry out the provisions of 81-7-101 through 81-7-105. Specimens may be presented free of charge to a state museum or institution.

History: En. Sec. 3, Ch. 73, L. 1923; re-en. Sec. 3417.3, R.C.M. 1935; amd. Sec. 99, Ch. 147, L. 1963; amd. Sec. 151, Ch. 310, L. 1974; R.C.M. 1947, 46-1904; amd. Sec. 1, Ch. 277, L. 1983.

81-7-106. Predatory animal state special revenue account. (1) There is an account in the state special revenue fund established by 17-2-102 to be known as the predatory animal special revenue account. The account is administered by the department.

(2) Money from per capita fees is transferred to the account pursuant to 15-24-925 for the purpose of protecting livestock in the state under the provisions of 81-7-101 through 81-7-104. The department is not required to spend all money allocated to this account by the end of each fiscal year.

(3) The predatory animal special revenue account is statutorily appropriated, as provided in 17-7-502, to the department for the purpose of protecting livestock as provided in subsection (2) of this section. *(Subsection (3) terminates June 30, 2029—sec. 1, Ch. 20, L. 2023, sec. 2, Ch. 20, L. 2023.)*

History: En. Sec. 2, Ch. 339, L. 2011.

81-7-107 through 81-7-110 reserved.

81-7-111. Evidence of killing by bounty claimant. (1) Any person killing a predatory animal, except a mountain lion, to obtain a bounty shall within 30 days of the date of the killing:

(a) exhibit the entire skin of the animal, including the entire head with ears, the tail, and all four paws, to the bounty inspector nearest to the locality in which the animal was killed; and

(b) at the same time file with the bounty inspector an affidavit setting forth:

(i) that the person killed the animal from which the skin was taken;

(ii) that the animal was killed nearer to or, if more than one hide is presented, that the greater number of animals were killed nearer to the residence of the bounty inspector to which the animals are being presented than to any other bounty inspector; and

(iii) the county or counties in which the animals were killed.

(2) Any person killing a mountain lion to obtain a bounty shall present the mountain lion to a bounty inspector as provided in this section, except that, in addition to the requirements of this section, the skin of a mountain lion must also contain the entire skin of the lower jaw, which must be severed by the bounty inspector and thereafter treated in the same manner as the skins of other animals subject to this section.

(3) Every bounty inspector appointed under the provisions of 81-7-111 through 81-7-118 and 81-7-120 through 81-7-122 is empowered to administer oaths to persons making the affidavit required by this section.

History: En. Sec. 2, Ch. 109, L. 1925; re-en. Sec. 3417.5, R.C.M. 1935; R.C.M. 1947, 46-1906; amd. Sec. 2, Ch. 214, L. 1997.

81-7-112. Bounty inspectors. The sheriff of a county and undersheriffs and deputy sheriffs located at the county seat but not elsewhere shall receive and examine skins and pelts

presented for bounty in their respective counties. The sheriff shall receive 10 cents for each skin examined, this amount to be paid by the owner of the skin.

History: En. Sec. 3, Ch. 109, L. 1925; re-en. Sec. 3417.6, R.C.M. 1935; amd. Sec. 152, Ch. 310, L. 1974; R.C.M. 1947, 46-1907(part).

Cross-References

Duties of Sheriff, 7-32-2121.

81-7-113. Claim for bounty. (1) A sheriff, undersheriff, and deputy sheriff, to prevent fraud, shall carefully examine each skin presented. If the examination discloses that the scalp and ears with the skin from the entire head of the animal have not been severed, punched, patched, or marked, the officer shall, in the presence of the person presenting the skin, mark the skin by severing the skin from the head, including the ears, and then redeliver the skin to the person presenting it. The officer shall require an affidavit from the claimant that the claimant killed the animal. The affidavit must be on forms prescribed by the department and contain information the department requires.

(2) The officer shall require affidavits from two residents residing in the vicinity in which the animal was killed, setting forth that they are residents paying fees on livestock, giving their post-office addresses, and stating that they are personally acquainted with the person presenting the skin and, to their knowledge, the person did kill the animal from which the skin was taken within 30 days preceding the offering of the skin for a bounty to the sheriff, undersheriff, or deputy sheriff to which it is presented. An individual who makes a false certificate or affidavit under this section in a material portion is guilty of a felony, punishable the same as for the crime of perjury.

History: En. Sec. 3, Ch. 109, L. 1925; re-en. Sec. 3417.6, R.C.M. 1935; amd. Sec. 152, Ch. 310, L. 1974; R.C.M. 1947, 46-1907(part); amd. Sec. 233, Ch. 574, L. 2001.

Cross-References

Penalty for perjury, 45-7-201.

81-7-114. Certificate and record of sheriff. (1) Upon receiving the affidavit required pursuant to 81-7-113, the officer shall deliver to the person claiming a bounty a certificate addressed to the county clerk of the officer's county and immediately deliver to the county clerk a duplicate of the certificate, showing the date, number, and kind of skins marked for severing and the name of the person presenting the skins. The certificate must also recite that the filing of the affidavits required by 81-7-113 has been done and the examination of the skins has been made as required. The certificate must be signed by the officer in the officer's official capacity. Each sheriff shall keep a record of all skins marked and severed, showing the date, number, and kinds and the names of the persons presenting the skins. This record is an official record. The sheriff, undersheriff, or deputy sheriff may not perform any duties under 81-7-111 through 81-7-118 and 81-7-120 through 81-7-122 except at the county seat.

(2) The sheriff shall, not later than the 15th of each month, give to the county clerk and recorder a report setting forth the names of the persons presenting skins, with the number of the certificate and the kind and number of the skins presented. The sheriff shall report for each certificate issued during the month.

History: En. Sec. 3, Ch. 109, L. 1925; re-en. Sec. 3417.6, R.C.M. 1935; amd. Sec. 152, Ch. 310, L. 1974; R.C.M. 1947, 46-1907(part); amd. Sec. 3, Ch. 214, L. 1997; amd. Sec. 234, Ch. 574, L. 2001.

81-7-115. Duty of county clerk. (1) The county clerk shall, on receipt of each certificate, file the certificate in the order in which it is received and safely keep it until the arrival of the skin or skins mentioned in the certificate. On receipt of the skin or skins, the county clerk shall call upon either the county treasurer or, in the treasurer's absence, the clerk of the district court who, with both present in order to prevent fraud, shall examine each scalp or mountain lion lower jaw skin. If the examination discloses that the scalps or lower jaw skins agree with the number and kind of scalps or lower jaw skins mentioned in the certificate, the county clerk shall, in the presence of the treasurer or clerk of the district court, destroy the scalps or lower jaw skins by fire.

(2) The county clerk shall then make out and deliver to the person named in that certificate a second certificate showing the statement of the facts contained in the certificate to the sheriff, undersheriff, or deputy sheriff, with the additional statement of the examination made by the clerk and that the clerk found the scalps or lower jaw skins to agree with the number and kind

mentioned in the certificate of the sheriff, undersheriff, or deputy sheriff. A bounty certificate may not be issued by the county clerk for more scalps or lower jaw skins than are actually received and counted.

(3) For each scalp or skin of a mountain lion lower jaw accounted for, the county clerk must receive the sum of 5 cents to be paid quarterly by the state treasurer out of the bounty fund.

(4) The county clerk shall keep a record of all certificates received and issued, showing the date and description of the number and kind of hides and the names of the persons presenting the hides, and this record is an official record. County clerks are required to send a report and statement to the department on or before the 20th of each month.

History: En. Sec. 3, Ch. 109, L. 1925; re-en. Sec. 3417.6, R.C.M. 1935; amd. Sec. 152, Ch. 310, L. 1974; R.C.M. 1947, 46-1907(3); amd. Sec. 5, Ch. 14, L. 1979; amd. Sec. 2670, Ch. 56, L. 2009.

Cross-References

Role and duties of County Clerk, 7-4-2611.

81-7-116. Bounty claims and certificates to be filed with department. Bounty claims and certificates issued by the county clerk and recorders under 81-7-115 shall be filed with the department and registered in a book provided for that purpose.

History: En. Sec. 4, Ch. 109, L. 1925; re-en. Sec. 3417.7, R.C.M. 1935; amd. Sec. 153, Ch. 310, L. 1974; R.C.M. 1947, 46-1908.

81-7-117. Department to examine claims and certificates — approval or disapproval of claims. The department shall examine and investigate every bounty claim and certificate filed with the department. When it makes the examination and investigation, the department may require the holder of a certificate or claim to furnish the department with the additional evidence or proof about the certificate or claim which the department considers necessary. The evidence may be either oral or documented, as required by the department. The department shall, after making the examination and investigation, endorse on the certificate or claim its approval or disapproval of it, and if the certificate or claim or any part of it is disapproved, the endorsement shall state the reasons for the disapproval. If a certificate or claim is approved, it shall be processed as provided by law.

History: En. Sec. 5, Ch. 109, L. 1925; re-en. Sec. 3417.8, R.C.M. 1935; amd. Sec. 23, Ch. 97, L. 1961; amd. Sec. 154, Ch. 310, L. 1974; R.C.M. 1947, 46-1909.

81-7-118. Fee for purpose of paying bounty claims — limitation on fee. The department of revenue shall annually prescribe the fee recommended by the department to be assessed against livestock of all classes for paying for the destruction of predatory animals killed in this state. The money received must be used only for the payment of claims approved by the department for the destruction of predatory animals and for the administration of 81-7-111 through 81-7-118 and 81-7-120 through 81-7-122. The money received for the fees imposed must be sent annually to the department of revenue by the county treasurer of each county. When the money is received by the department of revenue, it must be placed in the state special revenue fund and may then be paid out on claims approved under the law governing the payment of claims.

History: En. Sec. 10, Ch. 109, L. 1925; re-en. Sec. 3417.13, R.C.M. 1935; amd. Sec. 24, Ch. 97, L. 1961; amd. Sec. 101, Ch. 147, L. 1963; amd. Sec. 156, Ch. 310, L. 1974; amd. Sec. 42, Ch. 566, L. 1977; R.C.M. 1947, 46-1914; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 4, Ch. 244, L. 1995; amd. Sec. 4, Ch. 214, L. 1997; amd. Sec. 43, Ch. 257, L. 2001; amd. Sec. 235, Ch. 574, L. 2001.

81-7-119. Repealed. Sec. 8, Ch. 214, L. 1997.

History: En. Sec. 3075, Pol. C. 1895; re-en. Sec. 1909, Rev. C. 1907; amd. Sec. 1, Ch. 13, L. 1921; re-en. Sec. 3414, R.C.M. 1921; re-en. Sec. 3414, R.C.M. 1935; amd. Sec. 97, Ch. 147, L. 1963; R.C.M. 1947, 46-1901; amd. Sec. 6, Ch. 14, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

81-7-120. Use of funds remaining after payment of bounties — sale of furs, skins, and specimens — presentation to museums. (1) If, at the end of a bounty paying season, there is surplus money available for the administration of 81-7-111 through 81-7-118 and 81-7-120 through 81-7-122, the surplus may be used to hire salaried hunters and trappers to hunt and trap predatory animals and to purchase and supply poison to be used for a poison campaign on predatory animals.

(2) All furs, skins, and specimens taken by hunters or trappers whose salaries are paid in whole or in part out of this money must be sold by the department, and the proceeds from these sales must be credited to the state special revenue fund. These funds must be used to carry out 81-7-111 through 81-7-118 and 81-7-120 through 81-7-122. Specimens may be presented free of charge to a state museum or institution.

History: En. Sec. 8, Ch. 109, L. 1925; re-en. Sec. 3417.11, R.C.M. 1935; amd. Sec. 100, Ch. 147, L. 1963; amd. Sec. 155, Ch. 310, L. 1974; R.C.M. 1947, 46-1912; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 5, Ch. 214, L. 1997.

81-7-121. Falsifying certificates or affidavits — penalty. A person who falsely makes, alters, forges, or counterfeits any of the certificates or orders and any person who falsely swears to any affidavit provided for by 81-7-111 through 81-7-118 and 81-7-120 through 81-7-122 or procures the same act to be done by another, with the intent of obtaining any one of the certificates or orders, is punishable as provided in Title 45.

History: En. Sec. 9, Ch. 109, L. 1925; re-en. Sec. 3417.12, R.C.M. 1935; R.C.M. 1947, 46-1913; amd. Sec. 7, Ch. 14, L. 1979; amd. Sec. 6, Ch. 214, L. 1997.

Cross-References

Falsification of certificates or falsely sworn affidavits — forgery — criminal penalty, 45-6-325, 45-7-202, 45-7-203.

81-7-122. Penalty for fraudulent claims. A person who patches up a skin or scalp or presents a punched or patched skin or scalp or who brings in any skin or skins from other states or territories with the intent to fraudulently obtain a bounty or an officer who signs a certificate without first counting and examining the skins to determine the kind of skins and to see that the skin from the scalp or head is properly severed and preserved or a person who evades or violates any provision of law of the state of Montana relative to bounties or bounty claims shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding $1,000 or by imprisonment in the county jail not exceeding 1 year or both. Two-thirds of the fine must be given to the person, if any, reporting the evasion or violation and the balance must be deposited in the state special revenue fund and used for the administration of 81-7-111 through 81-7-118 and 81-7-120 through 81-7-122.

History: En. Sec. 11, Ch. 109, L. 1925; re-en. Sec. 3417.14, R.C.M. 1935; amd. Sec. 102, Ch. 147, L. 1963; R.C.M. 1947, 46-1915; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 7, Ch. 214, L. 1997.

81-7-123. Voluntary wolf mitigation account. (1) There is a voluntary wolf mitigation account in the state special revenue fund established in 17-2-102. The account is statutorily appropriated, as provided in 17-7-502, and must be used pursuant to subsection (3) of this section.

(2) The voluntary wolf mitigation account is funded by private donations. State agencies shall, as appropriate, facilitate private donations to the account, including but not limited to the following methods:

(a) a donation by a person of $1 or more above the price of a conservation license purchased pursuant to 87-2-202 or the price of a combination license that includes a conservation license; and

(b) a donation by a person, as defined in 2-4-102, through the websites of the department of livestock and the department of fish, wildlife, and parks.

(3) The department of livestock shall use the money collected pursuant to this section to contract for wolf management with the United States department of agriculture wildlife services, including but not limited to flight time, collaring, and lethal control of wolves.

(4) Funds collected pursuant to this section and paid by the department of livestock to the United States department of agriculture wildlife services are in addition to and not a substitute for any funds paid by the department to the United States department of agriculture wildlife services under any contract in effect on July 1, 2019.

History: En. Sec. 1, Ch. 434, L. 2019; amd. Sec. 9, Ch. 507, L. 2023.

Cross-References

Definitions — Montana Administrative Procedure Act, 2-4-102.
Fund structure, 17-2-102.
Statutory appropriations — definition — requisites for validity, 17-7-502.
Application — fee, 87-2-202.

Part 2
County Bounty Program

Part Cross-References
Taxation — collection procedures, 15-24-302.

81-7-201. County fee for bounties on predatory animals — definition. (1) Whenever the owners or agents of the owners of not less than 51% of the livestock of any county in this state present a petition to the board of county commissioners asking for the imposition of a fee upon the livestock of the county for the purpose of paying bounties on predatory animals killed in the county, the board of county commissioners shall impose the fee on all livestock in the county. The fee must remain in effect until a subsequent petition is submitted to modify or eliminate the fee.

(2) The board of county commissioners shall determine the dollar amount of the bounty to be paid on each predatory animal.

(3) The board of county commissioners may appoint bounty inspectors in addition to those provided for in 81-7-112.

(4) (a) Except as provided in subsection (4)(b), for the purposes of this part, "predatory animal" has the meaning provided in 81-7-101.

(b) The term does not include species managed or protected subject to Title 87.

History: En. Sec. 1, Ch. 180, L. 1921; re-en. Sec. 2082, R.C.M. 1921; re-en. Sec. 2082, R.C.M. 1935; amd. Sec. 63, Ch. 566, L. 1977; R.C.M. 1947, 84-5216; amd. Sec. 236, Ch. 574, L. 2001; amd. Sec. 1, Ch. 78, L. 2017.

81-7-202. Repealed. Sec. 5, Ch. 78, L. 2017.

History: En. Sec. 2, Ch. 180, L. 1921; re-en. Sec. 2083, R.C.M. 1921; amd. Sec. 1, Ch. 37, L. 1923; re-en. Sec. 2083, R.C.M. 1935; R.C.M. 1947, 84-5217; amd. Sec. 237, Ch. 574, L. 2001; amd. Sec. 1, Ch. 297, L. 2007.

81-7-203. County bounty fund. The tax collected under this part must be credited by the county treasurer to a fund to be known as "county bounty fund" and must be paid out by the treasurer upon properly drawn warrants issued on the fund by the county clerk.

History: En. Sec. 3, Ch. 180, L. 1921; re-en. Sec. 2084, R.C.M. 1921; re-en. Sec. 2084, R.C.M. 1935; R.C.M. 1947, 84-5218; amd. Sec. 2671, Ch. 56, L. 2009.

81-7-204. Presentation of skins — affidavit. A person claiming bounty on a predatory animal under this part shall present the green skin or pelt of the animal, with all four feet attached, to one of the bounty inspectors provided for in 81-7-112 or 81-7-201 and shall make an affidavit that the animal was killed within the county where the bounty is claimed. The affidavit must be corroborated by at least two reputable stockowners of the county to the effect that they know or have good cause to believe that the animal was killed within that county. For the purpose of this part, each bounty inspector is empowered to administer oaths. The bounty inspector shall endorse upon the affidavit the inspector's approval or disapproval of the claim and shall cut from the skin or pelt the four feet. The person applying for the bounty shall then present the affidavit, with the endorsements, to the county auditor or, in counties not having an auditor, to the county clerk, who shall attach the affidavit to a claim against the county bounty fund and present it to the board of county commissioners for action, the same as any other claim against the county.

History: En. Sec. 4, Ch. 180, L. 1921; re-en. Sec. 2085, R.C.M. 1921; re-en. Sec. 2085, R.C.M. 1935; R.C.M. 1947, 84-5219; amd. Sec. 2672, Ch. 56, L. 2009; amd. Sec. 2, Ch. 78, L. 2017.

81-7-205. County clerk to provide forms. The county clerk shall provide the necessary forms of affidavits and claims for carrying out the provisions of this part.

History: En. Sec. 5, Ch. 180, L. 1921; re-en. Sec. 2086, R.C.M. 1921; re-en. Sec. 2086, R.C.M. 1935; R.C.M. 1947, 84-5220.

81-7-206. Existing bounty laws not affected. Nothing in this part contained shall be construed as interfering with, in any way, or repealing any part of the existing laws of the state relative to the levying of taxes for and paying of the bounties on predatory animals under such state laws.

History: En. Sec. 6, Ch. 180, L. 1921; re-en. Sec. 2087, R.C.M. 1921; re-en. Sec. 2087, R.C.M. 1935; R.C.M. 1947, 84-5221.

Part 3
County Predator Control for Protection of Sheep

81-7-301. Definition. The word "owners" or "persons" shall include natural persons, partnerships, corporations, trusts, and estates.

History: En. Sec. 2, Ch. 206, L. 1943; amd. Sec. 1, Ch. 123, L. 1949; amd. Sec. 1, Ch. 87, L. 1957; amd. Sec. 1, Ch. 87, L. 1965; amd. Sec. 1, Ch. 261, L. 1977; R.C.M. 1947, 46-2102(part).

81-7-302. County commissioners to conduct predatory animal control program for protection of sheep. For the protection of sheep against depredations peculiar to such animals, the board of county commissioners of any county shall upon the recommendation of organized associations of sheep growers in the county have power, either alone or in conjunction with other counties, to conduct a predatory animal control program for the protection of sheep in such county or counties.

History: En. Sec. 1, Ch. 206, L. 1943; R.C.M. 1947, 46-2101.

81-7-303. County commissioners permitted to require per capita license fee on sheep. (1) To defray the expense of protection, the board of county commissioners of a county may require all owners or persons in possession of a sheep 9 months of age or older in the county on the regular assessment date of each year, as provided in 15-24-903, to pay a per capita license fee in an amount to be determined by the board. All owners or persons in possession of a sheep 9 months of age or older coming into the county after the regular assessment date and subject to the per capita levy under the provisions of Title 15, chapter 24, part 9, are subject to payment of the license fee.

(2) On the order of the board of county commissioners, the license fee may be imposed by entering the name of the licensee on the assessment record of the county by the department of revenue. The license fee is payable to and must be collected by the county treasurer. When levied, the fee is a lien on the property, both real and personal, of the licensee. If the person against whom the license fee is levied does not own real estate against which the license fee is or may become a lien, then the license fee is payable immediately on its levy and the treasurer shall collect the fee in the manner provided by law for the collection of personal property taxes that are not a lien on real estate.

(3) The fees must be placed in a predatory animal control fund separate from the funds provided for in 81-7-603 and 81-7-703. The money in the predatory animal control fund may be expended by the board of county commissioners for predatory animal control, including bounties paid pursuant to Title 81, chapter 7, part 2. Interest earned on money in the fund must be deposited in the fund.

(4) Money from any source may be deposited in the predatory animal control fund provided for in this section to carry out the provisions of this part.

History: En. Sec. 2, Ch. 206, L. 1943; amd. Sec. 1, Ch. 123, L. 1949; amd. Sec. 1, Ch. 87, L. 1957; amd. Sec. 1, Ch. 87, L. 1965; amd. Sec. 1, Ch. 261, L. 1977; R.C.M. 1947, 46-2102(part); amd. Sec. 1, Ch. 9, L. 1981; amd. Sec. 153, Ch. 27, Sp. L. November 1993; amd. Sec. 24, Ch. 285, L. 1999; amd. Sec. 2, Ch. 12, L. 2005; amd. Sec. 1, Ch. 176, L. 2005; amd. Sec. 3, Ch. 78, L. 2017; amd. Sec. 6, Ch. 529, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 6, Ch. 529, L. 2025. Amendment effective October 1, 2025.

81-7-304. Proceeds of furs and skins taken. All furs, skins, and so forth taken by the expenditure of license funds shall be sold and the proceeds of such sale deposited in said predatory animal control fund for the use in carrying out the purpose of this part.

History: En. Sec. 3, Ch. 206, L. 1943; R.C.M. 1947, 46-2103.

81-7-305. Duty of county commissioners — petition of sheep owners — license fees. (1) In conducting a predatory animal control program, the board of county commissioners shall give preference to recommendations for a program made by organized associations of sheep growers in the county. Upon petition of the resident owners of at least 51% of the sheep in the county, as shown by the assessment rolls of the last preceding assessment, the board shall establish the predatory animal control program and issue licenses and collect fees for the following year in an amount that will defray the cost of administering the program. The petition must be filed with the board on or before the first Monday in December in any year, and a

signature on a petition may not be withdrawn by the signer after the hour set for hearing the petition. The license fee determined and set by the board must remain in effect from year to year without change, unless there is filed with the board a petition subscribed by the resident owners of at least 51% of the sheep in the county, as shown by the assessment rolls of the last assessment preceding the filing of the petition, for termination of the program and repeal of the license fee. Upon the filing of the petition, the board shall terminate the program and cease levying the license fee.

(2) If the resident owners of at least 51% of the sheep in the county either petition for an increase in the license fee or petition for a decrease in the license fee then in effect, the board shall set a new license fee to continue from year to year.

History: En. Sec. 4, Ch. 206, L. 1943; amd. Sec. 1, Ch. 24, L. 1949; amd. Sec. 2, Ch. 87, L. 1957; amd. Sec. 2, Ch. 87, L. 1965; amd. Sec. 2, Ch. 261, L. 1977; R.C.M. 1947, 46-2104; amd. Sec. 2, Ch. 9, L. 1981; amd. Sec. 2, Ch. 297, L. 2007.

Part 4
Dogs

Part Cross-References

Domestic animal control and protection, Title 7, ch. 23.

81-7-401. Killing of dogs harassing, destroying, or injuring stock — notice to owner — penalty. (1) As used in this section, "harasses" means worries, chases, or runs after livestock, including ostriches, rheas, and emus, in a manner that may lead to subsequent injury to the livestock.

(2) A dog, whether licensed or not, that, while off the premises owned or under control of its owner and on property owned, leased, or controlled by the livestock owner, harasses, kills, wounds, or injures livestock not belonging to the owner of the dog is considered a public nuisance and:

(a) may be killed immediately by the owner of the livestock or an agent or employee of the owner; or

(b) the owner of the dog, when reasonably notified after due process, shall kill the dog within 24 hours of notification. If the owner fails to do so, an officer may be notified and shall kill the dog or cause the dog to be killed.

(3) A dog may not be killed in a manner that will endanger a person.

(4) This section does not apply to a dog herding livestock under the direction of its owner or the agents or employees of its owner.

(5) This section does not apply to a dog engaged in legitimate sport hunting or predator control activities under the direction of its owner or the agents or employees of its owner.

(6) The owner of a dog that harasses, kills, wounds, or injures livestock is guilty of a misdemeanor and upon conviction shall be fined not more than $500.

History: En. Sec. 1, Ch. 142, L. 1933; re-en. Sec. 3417.15, R.C.M. 1935; R.C.M. 1947, 46-1916; amd. Sec. 1, Ch. 106, L. 1993; (6)En. Sec. 2, Ch. 106, L. 1993; amd. Sec. 12, Ch. 206, L. 1995.

Cross-References

Public nuisances, Title 27, ch. 30, part 2.

81-7-402. Liability of owner of dog for damages to livestock or poultry. (1) The owner of livestock or poultry injured or killed by any dog may recover as liquidated damages from the owner of the dog the actual value of the animals killed or the value of the damages sustained by reason of the injuries as the case may be. If two or more dogs kept by two or more owners or keepers injure or kill any livestock or poultry at the same time, the owners or keepers of the dogs are jointly and severally liable for such damages. It is no defense to the action that the owner or keeper of the dog had no knowledge of the dog's whereabouts at or prior to the time when the dog injured or killed livestock or poultry or that the owner or keeper of the dog had no knowledge of the dog's disposition or inclination to worry, kill, or injure livestock or poultry.

(2) The word "owner" when used in this section in relation to property interest in or possession of dogs includes every person who owns, harbors, or keeps a dog.

History: En. Secs. 14, 15, Ch. 280, L. 1959; R.C.M. 1947, 16-4614, 16-4615; amd. Sec. 8, Ch. 14, L. 1979.

81-7-403. Dogging livestock. Any person who permits or directs any dog owned by the person or in the person's possession to chase or run any cattle or other livestock of which the person is not the owner or the person in charge upon the open range or government lands or away from any watering place upon the open range is guilty of a misdemeanor and shall be punished by a fine of not more than $500.

History: En. Sec. 1, Ch. 110, L. 1903; re-en. Sec. 8861, Rev. C. 1907; re-en. Sec. 11552, R.C.M. 1921; re-en. Sec. 11552, R.C.M. 1935; Sec. 94-3567, R.C.M. 1947; redes. 46-3001 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 56, Ch. 12, L. 1977; R.C.M. 1947, 46-3001; amd. Sec. 3, Ch. 106, L. 1993; amd. Sec. 2673, Ch. 56, L. 2009.

Part 5
Aerial Hunting of Predatory Animals

Part Cross-References

Restrictions on use of manned or unmanned aircraft, 87-3-126.

Unlawful use of aircraft for hunting, 87-6-208.

81-7-501. Aerial hunting prohibited — exceptions. (1) Except as provided in 81-7-505, a person, except an employee of the state, its subdivisions, or the federal government who is acting within the scope of the person's employment, may not engage in the aerial hunting of predatory animals, as defined in 81-7-101, without first obtaining a permit from the department of livestock. The permit must specify the species of predatory animals to be hunted and the geographic areas over which aerial hunting may take place.

(2) A person issued a permit as required by this section may not engage in aerial hunting of predatory animals in violation of the terms of the permit, the rules promulgated by the board of livestock, or the terms of this part.

History: En. Sec. 1, Ch. 704, L. 1979; amd. Sec. 1, Ch. 333, L. 1983; amd. Sec. 5, Ch. 244, L. 1995; amd. Sec. 2674, Ch. 56, L. 2009.

81-7-502. Rulemaking authority. The department of livestock may adopt rules to effectuate the purposes of this part and to implement and conduct the aerial hunting permit system provided for by this part.

History: En. Sec. 2, Ch. 704, L. 1979.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

81-7-503. Repealed. Sec. 1, Ch. 132, L. 2023.

History: En. Sec. 4, Ch. 704, L. 1979; amd. Sec. 2, Ch. 333, L. 1983.

81-7-504. Duration of permit — fee. The department of livestock shall establish a fee for the permit, and each permit shall be valid for a period set by the department not to exceed 3 years. Fees collected pursuant to this section must be deposited in the state special revenue fund to the credit of the department for expenses incurred administering the aerial hunting of predators permit system. The department may not use more than $2,500 in fees collected for administrative expenses. Fees collected in excess of $2,500 for administrative expenses must be deposited in the predatory animal special revenue account established in 81-7-106.

History: En. Sec. 3, Ch. 704, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 14, Ch. 444, L. 1983; amd. Sec. 1, Ch. 301, L. 2019.

81-7-505. Resident landowners authorized to aerially hunt over their own lands without permit — conditions. Any landowner having residence and domicile in Montana may engage in the aerial hunting of predatory animals, as defined in 81-7-101, over that person's own land without a permit, provided the landowner annually notifies the department in writing that the landowner will be engaged in aerial hunting and gives an adequate description of the location of the land over which the landowner will aerially hunt. Aerial hunting must be in accordance with all rules of the department of livestock.

History: En. Sec. 5, Ch. 704, L. 1979; amd. Sec. 3, Ch. 333, L. 1983; amd. Sec. 6, Ch. 244, L. 1995.

81-7-506. Prohibition against harassing livestock. While engaged in flying an aircraft, no person, whether or not lawfully authorized to aerially hunt, may knowingly harass, injure, or attempt to injure any livestock except with the express permission of the owner of that livestock.

History: En. Sec. 5, Ch. 333, L. 1983.

81-7-507 through 81-7-510 reserved.

81-7-511. Penalty — revocation of permit. Any person convicted of violating a provision of this part is punishable by a fine of not less than $500 or more than $1,000. In addition, the permit, if any, of such person must be revoked for such period as the court may determine.

History: En. Sec. 6, Ch. 704, L. 1979; amd. Sec. 4, Ch. 333, L. 1983.

81-7-512. Enforcement. (1) Investigations of violations of this part, arrests, and seizures may be made by any peace officer, or agent of the department designated by the department.

(2) To enforce this part, the department may enter into agreement with federal agencies with predatory animal control. Such agreements may allow the federal agency to assist in investigations, arrests, and seizures.

History: En. Sec. 7, Ch. 704, L. 1979.

Part 6
County Predator Control for Protection of Cattle

81-7-601. Definition. As used in this part, the word "owners" or "persons" includes natural persons, partnerships, corporations, trusts, and estates.

History: En. Sec. 1, Ch. 76, L. 1995.

81-7-602. County commissioners authorized to establish predatory animal control program for protection of cattle. Upon the recommendation of an organized association of cattle producers in the county, the board of county commissioners may, either alone or in conjunction with the county commissioners of other counties, establish a predatory animal control program for the protection of cattle in the county or counties.

History: En. Sec. 2, Ch. 76, L. 1995.

Cross-References

County vertebrate pest management, Title 7, ch. 22, part 25.

81-7-603. County commissioners permitted to require per capita license fee on cattle. (1) To defray the expense of protection, the board of county commissioners may require all owners or persons in possession of cattle 9 months of age or older in the county on the regular assessment date of each year, as provided in 15-24-903, to pay a per capita license fee in an amount to be determined by the board. All owners or persons in possession of cattle 9 months of age or older coming into the county after the regular assessment date and subject to the per capita levy under the provisions of Title 15, chapter 24, part 9, are subject to payment of the license fee.

(2) On the order of the board of county commissioners, the license fee may be imposed by entering the name of the licensee on the assessment record of the county by the department of revenue. The license fee is payable to and must be collected by the county treasurer. When levied, the fee is a lien on the property, both real and personal, of the licensee. If the person against whom the license fee is levied does not own real estate against which the license fee is or may become a lien, then the license fee is payable immediately on its levy and the treasurer shall collect the fee in the manner provided by law for the collection of personal property taxes that are not a lien on real estate.

(3) The fees must be placed in a predatory animal control fund separate from the funds provided for in 81-7-303 and 81-7-703. The money in the predatory animal control fund may be expended by the board of county commissioners for predatory animal control, including bounties paid pursuant to Title 81, chapter 7, part 2. Interest earned on money in the fund must be deposited in the fund.

(4) Money from any source may be deposited in the predatory animal control fund provided for in this section to carry out the provisions of this part.

History: En. Sec. 3, Ch. 76, L. 1995; amd. Sec. 25, Ch. 285, L. 1999; amd. Sec. 3, Ch. 12, L. 2005; amd. Sec. 2, Ch. 176, L. 2005; amd. Sec. 5, Ch. 54, L. 2015; amd. Sec. 4, Ch. 78, L. 2017; amd. Sec. 7, Ch. 529, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 7, Ch. 529, L. 2025. Amendment effective October 1, 2025.

81-7-604. Proceeds of skins taken. All furs, skins, and other portions of predatory animals taken through the expenditure of license fees must be sold and the proceeds of the sale deposited in the predatory animal control fund for use in carrying out the purpose of this part.

History: En. Sec. 4, Ch. 76, L. 1995.

81-7-605. Duty of county commissioners — petition of cattle owners — license fees. (1) In conducting a predatory animal control program, the board of county commissioners shall give preference to recommendations for a program made by an organized association of cattle producers in the county. Upon petition of the resident owners of at least 51% of the cattle in the county, as shown by the property tax record of the last preceding assessment, the board shall establish the predatory animal control program and issue licenses and collect fees for the following year in an amount that will defray the cost of administering the program. The petition must be filed with the board on or before the first Monday in December in any year, and a signature on a petition may not be withdrawn by the signer after the hour set for hearing the petition. The license fee set by the board must remain in effect from year to year without change unless there is filed with the board a petition signed by the resident owners of at least 51% of the cattle in the county, as shown by the property tax record of the last assessment preceding the filing of the petition, for termination of the program and elimination of the license fee. Upon the filing of the petition, the board shall terminate the program and cease levying the license fee.

(2) If the resident owners of at least 51% of the cattle in the county file a petition with the board either for an increase in the license fee or for a decrease in the license fee then in effect, the board shall set a new license fee to continue from year to year.

History: En. Sec. 5, Ch. 76, L. 1995; amd. Sec. 3, Ch. 297, L. 2007.

Part 7
County Predator Control for Protection of Goats

Part Compiler's Comments

Effective Date: This part is effective October 1, 2025.

81-7-701. Definitions. As used in this part, the following definitions apply:

(1) "Owners" or "persons" include natural persons, partnerships, corporations, trusts, and estates.

(2) "Predatory animal" has the meaning provided in 81-7-101.

History: En. Sec. 1, Ch. 529, L. 2025.

81-7-702. County commissioners authorized to establish predatory animal control program for protection of goats. On the recommendation of an organized association of goat producers in the county, the board of county commissioners may, either alone or in conjunction with the county commissioners of other counties, establish a predatory animal control program for the protection of goats in the county or counties.

History: En. Sec. 2, Ch. 529, L. 2025.

81-7-703. County commissioners permitted to require per capita license fee on goats. (1) To defray the expense of protection, the board of county commissioners may require all owners or persons in possession of a goat 9 months of age or older in the county on the regular assessment date of each year, as provided in 15-24-903, to pay a per capita license fee in an amount to be determined by the board. All owners or persons in possession of a goat 9 months of age or older coming into the county after the regular assessment date and subject to the per capita levy under the provisions of Title 15, chapter 24, part 9, are subject to payment of the license fee.

(2) On the order of the board of county commissioners, the license fee may be imposed by entering the name of the licensee on the assessment record of the county by the department of revenue. The license fee is payable to and must be collected by the county treasurer. When levied, the fee is a lien on the property, both real and personal, of the licensee. If the person against whom the license fee is levied does not own real estate against which the license fee is or may become a lien, then the license fee is payable immediately on its levy and the treasurer shall collect the fee in the manner provided by law for the collection of personal property taxes that are not a lien on real estate.

(3) The fees must be placed in a predatory animal control fund, separate from the funds provided for in 81-7-303 and 81-7-603. The money in the predatory animal control fund may be expended by the board of county commissioners for predatory animal control, including bounties paid pursuant to Title 81, chapter 7, part 2. Interest earned on money in the fund must be deposited in the fund.

(4) Money from any source may be deposited in the predatory animal control fund provided for in this section to carry out the provisions of this part.

History: En. Sec. 3, Ch. 529, L. 2025.

81-7-704. Proceeds of furs and skins taken. All furs, skins, and other portions of predatory animals taken through the expenditure of license fees must be sold and the proceeds of the sale deposited in the predatory animal control fund for use in carrying out the purpose of this part.

History: En. Sec. 4, Ch. 529, L. 2025.

81-7-705. Duty of county commissioners — petition of goat owners — license fees. (1) In conducting a predatory animal control program, the board of county commissioners shall give preference to recommendations for a program made by an organized association of goat producers in the county. On petition of the resident owners of at least 51% of the goats in the county, as shown by the property tax record of the last preceding assessment, the board shall establish the predatory animal control program and issue licenses and collect fees for the following year in an amount that will defray the cost of administering the program. The petition must be filed with the board on or before the first Monday in December in any year, and a signature on a petition may not be withdrawn by the signer after the hour set for hearing the petition. The license fee set by the board must remain in effect from year to year without change, unless there is filed with the board a petition signed by the resident owners of at least 51% of the goats in the county, as shown by the property tax record of the last assessment preceding the filing of the petition, for termination of the program and elimination of the license fee. On the filing of the petition, the board shall terminate the program and cease levying the license fee.

(2) If the resident owners of at least 51% of the goats in the county file a petition with the board either for an increase in the license fee or a decrease in the license fee then in effect, the board shall set a new license fee to continue from year to year.

History: En. Sec. 5, Ch. 529, L. 2025.

CHAPTER 8
MARKETING

Part 1 — Livestock Markets (Repealed)

Part 2 — Livestock Markets and Dealers

81-8-201. Repealed.
81-8-202. Repealed.
81-8-203. Repealed.
81-8-204. Repealed.
81-8-205. Repealed.
81-8-206. Repealed.
81-8-207. Repealed.
81-8-208. Repealed.
81-8-209. Repealed.
81-8-210. Repealed.
81-8-211. Short title.
81-8-212. Purpose.
81-8-213. Definitions.
81-8-214. Regulation of certain nonmarket sales.
81-8-215. Quarantine of diseased animals.
81-8-216. Penalties.
81-8-217. Jurisdiction.
81-8-218 through 81-8-230 reserved.
81-8-231. Duties of department.
81-8-232. Posting of certificate or license.
81-8-233. Title warranty of livestock sold.
81-8-234. Financial responsibility.

81-8-235. Penalties for financial violations.
81-8-236. Injunctive remedy.
81-8-237 through 81-8-250 reserved.
81-8-251. Certificate to operate livestock market required — application.
81-8-252. Hearing on application for certificate — decision.
81-8-253. Transfer of certificate.
81-8-254. Cancellation or suspension of certificate.
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81-8-258. Records and reports.
81-8-259. Occasional off-premises sales.
81-8-260. Dispersal sales.
81-8-261. Inspection of public markets.
81-8-262. Sale of animals of unknown ownership.
81-8-263. Duties when ownership in doubt.
81-8-264. Livestock video auction — license to transact business — license fee — contract — renewal.
81-8-265. Refusal to issue or renew license — suspension or revocation.
81-8-266 through 81-8-270 reserved.
81-8-271. License to operate as livestock dealer — application.
81-8-272. Issuance of livestock dealer's license.
81-8-273. Refusal to issue or renew license.
81-8-274. Suspension or revocation of license.
81-8-275. Termination of license.
81-8-276. Annual fee and financial statement.
81-8-277. Repealed.
81-8-278. Records.
81-8-279. Penalties.

Part 3 — Security Interests Concerning Livestock

81-8-301. Notices of security agreements — renewals — assignments.
81-8-302. Contents of notices.
81-8-303. Duty of secured parties to file satisfactions of security agreements.
81-8-304. Fees.
81-8-305. Department of livestock not responsible for collection or payment of money under security agreements.
81-8-306 through 81-8-310 reserved.
81-8-311. Range stock — taking possession under process.
81-8-312. Possession under a mortgage — how acquired.
81-8-313. Limitation of period of possession.
81-8-314. Duty of county clerk and recorder of marks and brands to record papers.
81-8-315. Sale of property under supplementary writ.

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81-8-401. Certain dealings in baby animals unlawful.
81-8-402. Penalties.

Part 5 — Sale of Registered Livestock

81-8-501. Sale of animals under false registration certificates — changing markings — auctioneer.
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Part 6 — Pork Research and Marketing (Repealed)

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81-8-701. Definitions.
81-8-702. Montana quality label.
81-8-703. Limitation on use of label.
81-8-704. Procurement and use of labels — information concerning — disposal of moneys.
81-8-705. Wrongful use of label — penalty — injunction — prosecutions.

Part 8 — Beef Research and Marketing (Repealed)

Part 9 — Beef Promotion and Marketing

81-8-901. Beef promotion and marketing — powers and duties of department — contract.
81-8-902. Department not liable for collection of assessment — inspection.

Chapter Cross-References

Appropriation of money to promote county agricultural services or products, 7-21-3201.
Public markets, Title 7, ch. 21, part 33.
Town or city power to regulate inspection of foodstuffs and sale of meat and poultry, 7-21-4202.
Certain livestock exempt from taxation, 15-6-207.
Livestock taxation provisions, Title 15, ch. 24, part 9.
Unborn animals and growing crops included in Uniform Commercial Code definition of goods, 30-2-105.
Passage of title when cattle shipped interstate, 30-2-401.
Commission merchants, Title 30, ch. 11, part 4.
Sale of livestock products, Title 30, ch. 12, part 4.
Meat, poultry, and seafood to be sold by weight, 30-12-401.
Agricultural associations, Title 35, ch. 16.
Cooperative agricultural marketing, Title 35, ch. 17.
Montana Food, Drug, and Cosmetic Act, Title 50, ch. 31, parts 1 and 2.
Fees for farm vehicles, 61-10-206.
Marketing of agricultural products, including livestock and livestock products, Title 80, ch. 11, part 1.

Part 1
Livestock Markets
(Repealed)

81-8-101. Repealed. Sec. 37, Ch. 566, L. 1979.

History: En. Sec. 1, Ch. 193, L. 1945; amd. Sec. 118, Ch. 310, L. 1974; amd. Sec. 1, Ch. 292, L. 1975; amd. Sec. 30, Ch. 12, L. 1977; R.C.M. 1947, 46-906.

81-8-102. Repealed. Sec. 37, Ch. 566, L. 1979.

History: En. Sec. 3, Ch. 193, L. 1945; amd. Sec. 120, Ch. 310, L. 1974; amd. Sec. 34, Ch. 12, L. 1977; R.C.M. 1947, 46-908.

81-8-103. Repealed. Sec. 37, Ch. 566, L. 1979.

History: En. Sec. 4, Ch. 193, L. 1945; amd. Sec. 121, Ch. 310, L. 1974; amd. Sec. 1, Ch. 44, L. 1977; R.C.M. 1947, 46-909.

81-8-104. Repealed. Sec. 37, Ch. 566, L. 1979.

History: En. 46-909.1 by Sec. 1, Ch. 192, L. 1977; R.C.M. 1947, 46-909.1.

81-8-105. Repealed. Sec. 37, Ch. 566, L. 1979.

History: En. Sec. 6, Ch. 193, L. 1945; amd. Sec. 95, Ch. 147, L. 1963; amd. Sec. 123, Ch. 310, L. 1974; amd. Sec. 36, Ch. 12, L. 1977; R.C.M. 1947, 46-911.

81-8-106. Repealed. Sec. 37, Ch. 566, L. 1979.

History: En. Sec. 7, Ch. 193, L. 1945; amd. Sec. 124, Ch. 310, L. 1974; amd. Sec. 37, Ch. 12, L. 1977; amd. Sec. 2, Ch. 44, L. 1977; R.C.M. 1947, 46-912.

81-8-107. Repealed. Sec. 37, Ch. 566, L. 1979.

History: En. Sec. 10, Ch. 193, L. 1945; amd. Sec. 127, Ch. 310, L. 1974; amd. Sec. 39, Ch. 12, L. 1977; R.C.M. 1947, 46-915.

81-8-108. Repealed. Sec. 37, Ch. 566, L. 1979.

History: En. Sec. 12, Ch. 193, L. 1945; amd. Sec. 1, Ch. 231, L. 1947; amd. Sec. 129, Ch. 310, L. 1974; amd. Sec. 41, Ch. 12, L. 1977; R.C.M. 1947, 46-917.

81-8-109. Repealed. Sec. 37, Ch. 566, L. 1979.

History: En. 46-906.1 by Sec. 2, Ch. 292, L. 1975; amd. Sec. 31, Ch. 12, L. 1977; R.C.M. 1947, 46-906.1.

81-8-110 through 81-8-120 reserved.

81-8-121. Repealed. Sec. 37, Ch. 566, L. 1979.

History: En. Sec. 2, Ch. 193, L. 1945; amd. Sec. 119, Ch. 310, L. 1974; amd. Sec. 32, Ch. 12, L. 1977; R.C.M. 1947, 46-907.

81-8-122. Repealed. Sec. 37, Ch. 566, L. 1979.

History: En. Sec. 9, Ch. 193, L. 1945; amd. Sec. 126, Ch. 310, L. 1974; R.C.M. 1947, 46-914.

81-8-123. Repealed. Sec. 37, Ch. 566, L. 1979.

History: En. Sec. 2, Ch. 96, L. 1907; Sec. 1816, Rev. C. 1907; re-en. Sec. 3329, R.C.M. 1921; re-en. Sec. 3329, R.C.M. 1935; amd. Sec. 115, Ch. 310, L. 1974; R.C.M. 1947, 46-902.

81-8-124. Repealed. Sec. 37, Ch. 566, L. 1979.

History: En. Sec. 3, Ch. 96, L. 1907; Sec. 1817, Rev. C. 1907; re-en. Sec. 3330, R.C.M. 1921; re-en. Sec. 3330, R.C.M. 1935; amd. Sec. 116, Ch. 310, L. 1974; amd. Sec. 29, Ch. 12, L. 1977; R.C.M. 1947, 46-903(part).

81-8-125. Repealed. Sec. 37, Ch. 566, L. 1979.
History: (1), (2)En. Sec. 1, Ch. 96, L. 1907; Sec. 1815, Rev. C. 1907; amd. Sec. 1, Ch. 21, L. 1909; re-en. Sec. 3328, R.C.M. 1921; re-en. Sec. 3328, R.C.M. 1935; Sec. 46-901, R.C.M. 1947; (3)En. Sec. 8, Ch. 193, L. 1945; amd. Sec. 125, Ch. 310, L. 1974; amd. Sec. 38, Ch. 12, L. 1977; Sec. 46-913, R.C.M. 1947; R.C.M. 1947, 46-901, 46-913.

81-8-126. Repealed. Sec. 37, Ch. 566, L. 1979.
History: En. Sec. 3, Ch. 96, L. 1907; Sec. 1817, Rev. C. 1907; re-en. Sec. 3330, R.C.M. 1921; re-en. Sec. 3330, R.C.M. 1935; amd. Sec. 116, Ch. 310, L. 1974; amd. Sec. 29, Ch. 12, L. 1977; R.C.M. 1947, 46-903(part).

81-8-127. Repealed. Sec. 37, Ch. 566, L. 1979.
History: En. 46-907.1 by Sec. 3, Ch. 292, L. 1975; amd. Sec. 33, Ch. 12, L. 1977; R.C.M. 1947, 46-907.1.

81-8-128. Repealed. Sec. 37, Ch. 566, L. 1979.
History: En. Sec. 14, Ch. 193, L. 1945; R.C.M. 1947, 46-919.

81-8-129. Repealed. Sec. 37, Ch. 566, L. 1979.
History: En. Sec. 11, Ch. 193, L. 1945; amd. Sec. 128, Ch. 310, L. 1974; amd. Sec. 40, Ch. 12, L. 1977; R.C.M. 1947, 46-916.

81-8-130. Repealed. Sec. 37, Ch. 566, L. 1979.
History: En. Sec. 13, Ch. 193, L. 1945; amd. Sec. 130, Ch. 310, L. 1974; R.C.M. 1947, 46-918.

81-8-131. Repealed. Sec. 37, Ch. 566, L. 1979.
History: En. Sec. 1, Ch. 34, L. 1969; amd. Sec. 131, Ch. 310, L. 1974; R.C.M. 1947, 46-918.1.

81-8-132. Repealed. Sec. 37, Ch. 566, L. 1979.
History: En. Sec. 15, Ch. 193, L. 1945; amd. Sec. 132, Ch. 310, L. 1974; amd. Sec. 42, Ch. 12, L. 1977; R.C.M. 1947, 46-920.

81-8-133. Repealed. Sec. 37, Ch. 566, L. 1979.
History: En. Sec. 16, Ch. 193, L. 1945; amd. Sec. 43, Ch. 12, L. 1977; R.C.M. 1947, 46-921.

Part 2
Livestock Markets and Dealers

Part Cross-References
Jurisdiction of Justices' Courts over misdemeanor violations, 3-10-303.

81-8-201. Repealed. Sec. 37, Ch. 566, L. 1979.
History: En. Sec. 1, Ch. 414, L. 1971; amd. Sec. 182, Ch. 310, L. 1974; R.C.M. 1947, 46-2901.

81-8-202. Repealed. Sec. 37, Ch. 566, L. 1979.
History: En. Sec. 2, Ch. 414, L. 1971; amd. Sec. 183, Ch. 310, L. 1974; R.C.M. 1947, 46-2902.

81-8-203. Repealed. Sec. 37, Ch. 566, L. 1979.
History: En. Sec. 7, Ch. 414, L. 1971; amd. Sec. 190, Ch. 310, L. 1974; R.C.M. 1947, 46-2907.

81-8-204. Repealed. Sec. 37, Ch. 566, L. 1979.
History: En. Sec. 3, Ch. 414, L. 1971; amd. Sec. 184, Ch. 310, L. 1974; R.C.M. 1947, 46-2903.

81-8-205. Repealed. Sec. 37, Ch. 566, L. 1979.
History: En. 46-2903.1 by Sec. 185, Ch. 310, L. 1974; R.C.M. 1947, 46-2903.1

81-8-206. Repealed. Sec. 37, Ch. 566, L. 1979.
History: En. 46-2903.2 by Sec. 186, ch. 310, L. 1974; amd. Sec. 1, Ch. 17. L. 1977; R.C.M. 1947, 46-2903.2.

81-8-207. Repealed. Sec. 37, Ch. 566, L. 1979.
History: En. Sec. 4, Ch. 414, L. 1971; amd. Sec. 187, Ch. 310, L. 1974; R.C.M. 1947, 46-2904.

81-8-208. Repealed. Sec. 37, Ch. 566, L. 1979.
History: En. Sec. 5, Ch. 414, L. 1971; amd. Sec. 188, Ch. 310, L. 1974; R.C.M. 1947, 46-2905.

81-8-209. Repealed. Sec. 37, Ch. 566, L. 1979.
History: En. Sec. 6, Ch. 414, L. 1971; amd. Sec. 189, Ch. 310, L. 1974; R.C.M. 1947, 46-2906.

81-8-210. Repealed. Sec. 37, Ch. 566, L. 1979.
History: En. 46-2906.1 by Sec. 2, Ch. 190, L. 1977; R.C.M. 1947, 46-2906.1.

81-8-211. Short title. This part may be cited as the "Montana Livestock Marketing Act".
History: En. Sec. 1, Ch. 566, L. 1979.

81-8-212. Purpose. The purpose of this part is to:

(1) simplify, clarify, and modernize the law governing livestock marketing businesses and livestock marketing transactions;

(2) encourage, stimulate, and stabilize the livestock economy of the state; and

(3) promote open, free, and competitive factors in the marketplace in relation to all market conditions involving the sale and purchase of livestock.

History: En. Sec. 2, Ch. 566, L. 1979.

81-8-213. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of livestock provided for in 2-15-3102.

(2) "Custodial account for shippers' proceeds" or "custodial account" means a separate account established and maintained by a livestock market or livestock video auction engaged in selling livestock on a commission or agency basis. The account must be maintained in a Montana bank insured by the federal deposit insurance corporation and used to maintain and disburse all funds due to consignors from livestock sold on a commission basis. All checks or banking instruments to consignors in payment of the net proceeds from the sale of consigned livestock must be issued on the custodial account. This account must disclose that the depositor is acting as a fiduciary and that the funds in the account are trust funds.

(3) "Department" means the department of livestock provided for in Title 2, chapter 15, part 31.

(4) "Immediate resale" means a sale of livestock within 60 days of the purchase of the livestock.

(5) "Livestock" means cattle, calves, hogs, pigs, horses, mules, sheep, lambs, and goats.

(6) (a) "Livestock dealer" means a person engaged in the business of buying or selling livestock in commerce on the person's own account or as an employee or agent of a vendor or purchaser.

(b) The term does not include:

(i) a farmer or rancher who buys or sells livestock in the ordinary course of a farming or ranching operation; or

(ii) a livestock market.

(7) (a) "Livestock market" means:

(i) a person engaged in the business of buying or selling livestock in commerce on a commission basis;

(ii) a person engaged in the business of furnishing stockyard services; or

(iii) a livestock video auction as defined in this section.

(b) The term does not include:

(i) a place used solely for a dispersal sale of the livestock of a farmer, dairy producer, livestock breeder, or feeder who is discontinuing business and at which other livestock is not sold or offered for sale;

(ii) a farm, ranch, or place where livestock either raised or kept for the grazing season or for fattening is sold and to which other livestock is not brought for sale or to be offered for sale;

(iii) the premises of a butcher, packer, or processor who receives animals exclusively for immediate slaughter;

(iv) the premises of a person engaged in the raising of livestock for breeding purposes only, who limits sale to livestock of the person's own production; or

(v) a place where a breeder or an association of breeders of livestock of any class assembles and offers for sale and sells under the breeder's or the association's own management any livestock, when the breeder or association of breeders assumes all responsibility for the sale and the title of livestock sold.

(8) "Livestock video auction" means a person who conducts the business of buying or selling livestock on a commission or fee basis through the use of online, video, or other electronic means and who provides the means for handling receivables or proceeds resulting from these types of transactions.

(9) "Person" means an individual, firm, association, partnership, or corporation.

(10) "Test station sale" means the sale of livestock from a place where livestock is taken to measure rates of gain under uniform feeding conditions when that place is not owned by the owner of the livestock.

History: En. Sec. 3, Ch. 566, L. 1979; amd. Sec. 2, Ch. 52, L. 1985; amd. Sec. 1, Ch. 401, L. 1989; amd. Sec. 1, Ch. 160, L. 1995; amd. Sec. 1, Ch. 37, L. 2023.

81-8-214. Regulation of certain nonmarket sales. (1) A person not a livestock market operator authorized under this part conducting the sale of livestock in a breed sale, a breed association sale, or at a test station sale, except when all of the livestock are owned by that person and are being sold from that person's own place, shall obtain approval from the department before conducting the sale.

(2) The department, as conditions to granting approval, may require:

(a) the names and addresses of those conducting the sale;

(b) the date and time when and the place where the sale will be conducted;

(c) a detailed statement of the assets and liabilities of the persons conducting the sale;

(d) the establishment of a custodial account into which all money received for the sale of livestock must be deposited;

(e) the posting of a reasonable bond or its equivalent in an amount determined by the department;

(f) the commissions or charges proposed to be imposed on the owners of livestock for services associated with the sale;

(g) a guarantee to pay all consignors in full within a reasonable time as set by the department; and

(h) other information that the department considers necessary.

History: En. Sec. 16, Ch. 566, L. 1979; amd. Sec. 1, Ch. 11, L. 1995.

81-8-215. Quarantine of diseased animals. If the livestock inspector at a sale finds any livestock afflicted with an infectious or contagious disease, the inspector shall immediately take possession of the livestock and place the livestock in quarantine, to be disposed of as directed by the department.

History: En. Sec. 21, Ch. 566, L. 1979; amd. Sec. 2675, Ch. 56, L. 2009.

Cross-References

Disease control, Title 81, ch. 2.

81-8-216. Penalties. (1) A person who knowingly violates any provision of 81-8-214, 81-8-215, 81-8-251 through 81-8-256, and 81-8-258 through 81-8-263 or rules adopted by the department under 81-8-231 is guilty of a misdemeanor and upon conviction shall be fined not less than $100 or more than $600, imprisoned in the county jail not less than 30 days or more than 6 months, or both. A person convicted of a subsequent violation of 81-8-214, 81-8-215, 81-8-251 through 81-8-256, and 81-8-258 through 81-8-263 or rules adopted to implement those sections shall be fined not less than $200 or more than $1,000, imprisoned in the county jail for not less than 3 months or more than 6 months, or both, and the department may cancel the person's certificate.

(2) Of all fines assessed and collected under this section, except those assessed and collected in a justice's court, 50% must be paid into the state treasury and credited to the special revenue fund for the use of the department and 50% must be paid into the general revenue fund of the county in which the conviction occurred.

(3) A person is, upon conviction, guilty of a felony if the person knowingly fails:

(a) to establish a custodial account resulting in a failure to account for or to remit money belonging to others under this chapter; or

(b) to properly use a custodial account resulting in a failure to account for or to remit money belonging to others under this chapter.

History: En. Sec. 24, Ch. 566, L. 1979; amd. Sec. 3, Ch. 52, L. 1985; amd. Sec. 142, Ch. 370, L. 1987; amd. Sec. 56, Ch. 557, L. 1987; amd. Sec. 1, Ch. 279, L. 1989; amd. Sec. 1, Ch. 5, L. 1993.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

81-8-217. Jurisdiction. The justices' courts have jurisdiction of all misdemeanor and civil violations of this part.

History: En. Sec. 32, Ch. 566, L. 1979.

81-8-218 through 81-8-230 reserved.

81-8-231. Duties of department. The department shall:

(1) supervise and regulate livestock markets and livestock dealers in this state and periodically audit the records of those markets and dealers;

(2) regulate the properties, facilities, operations, services, and practices of all livestock markets and livestock dealers;

(3) supervise and regulate livestock markets in all matters affecting the relationship between the livestock market and owners of livestock and between the livestock market and purchasers of livestock;

(4) prescribe, by general order or otherwise, rules in conformity with this part applicable to all livestock markets or livestock dealers and not in conflict with the laws of the United States or regulations of the United States department of agriculture or other federal agencies;

(5) enforce this part and adopt rules necessary to carry out this part.

History: En. Sec. 4, Ch. 566, L. 1979; amd. Sec. 4, Ch. 52, L. 1985; amd. Sec. 2, Ch. 11, L. 1995.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

Penalties for violation of rules, 81-8-279.

81-8-232. Posting of certificate or license. A person who is certified or licensed under the provisions of this part shall conspicuously post at the person's place of business for inspection by any other person the certificate or license issued by the department.

History: En. Sec. 5, Ch. 566, L. 1979; amd. Sec. 2676, Ch. 56, L. 2009.

81-8-233. Title warranty of livestock sold. A livestock market or livestock dealer shall warrant to the purchaser thereof the title of all livestock sold. A livestock market is liable to the rightful owner of all livestock sold for the net proceeds for such livestock whether or not the rightful owner was known to the market at the time of the sale.

History: En. Sec. 8, Ch. 566, L. 1979; amd. Sec. 5, Ch. 52, L. 1985.

81-8-234. Financial responsibility. (1) Every livestock market or livestock dealer shall maintain a financial condition of total assets in excess of total liability, including total current assets in excess of total current liabilities.

(2) Payment for livestock purchased shall be made upon completion of the sales transaction. Payment in all livestock transactions shall be made by cash, check, or draft, as defined in 30-3-104; by electronic funds transfer, as defined in 32-6-103; or by any other bankable instrument.

History: En. Sec. 6, Ch. 566, L. 1979; amd. Sec. 6, Ch. 52, L. 1985.

81-8-235. Penalties for financial violations. (1) A person found, after notice and hearing, to be in violation of 81-8-234 shall be assessed a civil penalty by the department of not less than $100 or more than $5,000 or have the person's license or certificate suspended or revoked, or both.

(2) A person found, after notice and hearing, to have committed a subsequent violation of 81-8-234 after the department has assessed a penalty pursuant to subsection (1) shall be fined not less than $250 or more than $5,000 and have the person's license or certificate suspended or revoked.

(3) A person, whether or not licensed under this part, who issues or delivers a check or other order upon a real or fictitious depository in payment for a livestock purchase knowing that it will not be paid by the depository is guilty of a felony and on conviction shall be imprisoned for not more than 5 years or be fined not more than $10,000, or both. If the person has an account with the depository, failure to make good the check or other order within 5 days after written notice of nonpayment has been received by the issuer is prima facie evidence that the person knew it would not be paid by the depository.

History: En. Sec. 7, Ch. 566, L. 1979; amd. Sec. 7, Ch. 52, L. 1985; amd. Sec. 2677, Ch. 56, L. 2009.

81-8-236. Injunctive remedy. The operation of a livestock market or the buying or selling of livestock by a person not licensed or certified and bonded as required by this part may be enjoined by the district court on petition from the department upon a showing that a person is engaged in the business of a livestock market or livestock dealer as defined in 81-8-213 without the license or certificate and bond required by this part. The court shall enjoin the person from further activities as a livestock market operator or livestock dealer until the license or

certificate and bond have been properly obtained. It is not necessary to show that any individual has been injured by the actions complained of in order to obtain the issuance of the injunction. The injunctive relief provided by this section is an additional remedy to the criminal penalties provided in this part.

History: En. Sec. 33, Ch. 566, L. 1979; amd. Sec. 8, Ch. 52, L. 1985.

Cross-References

Injunctions, Title 27, ch. 19.

81-8-237 through 81-8-250 reserved.

81-8-251. Certificate to operate livestock market required — application. (1) A person may not operate as a livestock market unless the person first obtains from the department a certificate declaring that public convenience and necessity require the operation.

(2) The application for a certificate of public convenience must be in writing, verified by the applicant, and filed with the department. The application must specify the following:

(a) (i) the names of the persons applying for a certificate together with their permanent addresses; or

(ii) if the applicant is a firm, association, partnership, or corporation, the names of its directors, officers, and members, if applicable;

(b) the place where the applicant proposes to operate as a livestock market;

(c) a complete description of the property and facilities proposed to be used for the livestock market;

(d) the commissions or charges the applicant proposes to impose on the consignors' livestock for services rendered by the applicant in the operation of the livestock market;

(e) a detailed statement of the facts on which the applicant relies to show public convenience and necessity for the livestock market, including the trade area to be served, the economic benefits to the livestock industry, and the services to be offered;

(f) if the applicant is a foreign corporation, its principal place of business outside the state, the state in which it is incorporated, and a showing that it is in compliance with the laws relating to foreign corporations doing business in this state;

(g) a detailed financial statement showing that current assets exceed current liabilities and that long-term assets exceed long-term liabilities; and

(h) any additional information the department may require.

History: En. Sec. 9, Ch. 566, L. 1979; amd. Sec. 2678, Ch. 56, L. 2009; amd. Sec. 2, Ch. 37, L. 2023.

81-8-252. Hearing on application for certificate — decision. (1) Upon the filing of an application for a certificate of public convenience pursuant to 81-8-251, the department shall fix a time and place for a hearing on the application, which may not be less than 10 days after the filing. The department shall have a copy of the application, excluding the financial statement described in 81-8-251(2)(g), and notice of the hearing served by mail on:

(a) the operators of any other livestock markets that in the opinion of the department might be affected by the granting of the certificate;

(b) the secretaries of the Montana stockgrowers association and the Montana woolgrowers association;

(c) the secretary of the district livestock association, if any;

(d) the secretary of the livestock association or associations, if any, within the vicinity of the proposed livestock market, if known to the department; and

(e) any railroad company operating into or through the town or city in which the proposed livestock market will be located.

(2) If, after the hearing on the application, the department finds from the evidence that public convenience and necessity require the authorization of the proposed livestock market, a certificate must be issued to the applicant. In determining whether public convenience and necessity require the livestock market, the department shall give reasonable consideration to the service rendered by other existing livestock markets in this state and the effect on them if the proposed livestock market is authorized and shall give due consideration to the likelihood of the proposed service being permanent and continuous throughout 12 months of the year.

History: En. Sec. 10, Ch. 566, L. 1979; amd. Sec. 1, Ch. 39, L. 1987; amd. Sec. 3, Ch. 37, L. 2023.

81-8-253. Transfer of certificate. The department may approve the transfer of ownership of a certificate of public convenience and necessity issued pursuant to this part without a determination and showing of public convenience and necessity. Such approval may be granted only after a public hearing at which the transferee's qualifications to operate a livestock market have been thoroughly examined and found sufficient to properly operate a livestock market. A minimum of 10 days' notice by mail must be given to all persons to whom notice is sent pursuant to the provisions of 81-8-252 of a hearing to consider an initial application for a certificate.

History: En. Sec. 11, Ch. 566, L. 1979.

81-8-254. Cancellation or suspension of certificate. (1) The department may cancel or suspend the certificate of an operator of a livestock market if it finds that the operator:

(a) is guilty of fraud or misrepresentation as to the titles, charges, number, brands, weights, proceeds of sale, or ownership of livestock;

(b) is in violation of any of the provisions of this part;

(c) is in violation of any of the rules adopted by the department; or

(d) is in violation of Title 81, chapter 3, part 2.

(2) The department on its own initiative or on written complaint may investigate a livestock market and may file a complaint against the livestock market with the board. The complaint shall be set for hearing before the board, and the department shall serve notice of the hearing on the livestock market at least 10 days before such hearing.

(3) An investigation or hearing initiated by the department under this part may be held before an examiner designated by the board. Any finding or order made by an examiner, if confirmed by the board, is the order or finding of the board.

History: En. Sec. 14, Ch. 566, L. 1979.

Cross-References

Montana Administrative Procedure Act — contested cases — notice, 2-4-601.

Rulemaking power of Department of Livestock, 81-8-231.

81-8-255. Appeal by holder of or applicant for certificate. An appeal of a decision of the department refusing to grant an application for a certificate or suspending or revoking a certificate of a livestock market shall be taken to the district court of the county in which the proposed livestock market is to be located or in which the authorized livestock market has its principal place of business. The appellant shall file a bond with the clerk of the district court in the sum of $300, to be approved by the judge, conditioned to pay all costs that may be awarded against the appellant in the event of an adverse decision or the decision of the department being affirmed. The cost of preparing transcripts shall be paid by appellant. In a case of suspension or revocation of a certificate, the filing of the notice and bond stays the order of the department until the final determination of the appeal. If the appellant fails to perfect the appeal, the stay shall automatically terminate.

History: En. Sec. 15, Ch. 566, L. 1979.

81-8-256. Fee to operate livestock market. A person operating a livestock market shall pay annually on May 1 to the department a fee established by the department. All fees shall be paid into the state treasury and credited to the state special revenue fund for the use of the department.

History: En. Sec. 12, Ch. 566, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 15, Ch. 444, L. 1983.

81-8-257. Repealed. Sec. 29, Ch. 444, L. 1983.

History: En. Sec. 13, Ch. 566, L. 1979.

81-8-258. Records and reports. Each livestock market shall keep accounts, records, and memoranda and shall make reports which the board requires, and the board and its authorized agents and employees shall at all times have access to the accounts, records, and memoranda for inspection and examination.

History: En. Sec. 18, Ch. 566, L. 1979.

81-8-259. Occasional off-premises sales. (1) The department may authorize occasional off-premises sales by authorized livestock markets and may establish the conditions under which approval for an off-premises sale may be granted, including any change in bonding requirements the department considers necessary.

(2) No livestock market for which a certificate has been issued under this part may conduct an off-premises sale without obtaining prior approval of the department.

History: En. Sec. 17, Ch. 566, L. 1979.

81-8-260. Dispersal sales. Dispersal sales conducted through a livestock market must meet the requirements of this part.

History: En. Sec. 19, Ch. 566, L. 1979.

81-8-261. Inspection of public markets. Livestock inspectors, including stock inspectors of a county or district, the sheriff of a county, or a representative of the department of livestock, may enter upon the premises where livestock are being held or sold and must be accorded every facility by the owners of the premises in determining whether a violation of the law is being committed or is likely to be committed. The inspection may not unnecessarily interfere with the conduct of the sales. Livestock sold at the market may not be delivered to the purchaser until the purchaser has first received an inspection certificate issued by one of the officers mentioned in this section, showing clearly and explicitly that the person making the inspection is satisfied as to the ownership of the livestock and the health of all livestock sold.

History: En. Sec. 20, Ch. 566, L. 1979; amd. Sec. 2679, Ch. 56, L. 2009.

Cross-References

Employment of stock inspector, 7-21-3211.
Authority of municipal corporations, 81-2-105.
Duties of state stock inspectors and deputy stock inspectors, 81-3-203.

81-8-262. Sale of animals of unknown ownership. (1) If there is any question respecting the ownership of livestock sold, the livestock inspector may take possession of the livestock. The livestock inspector shall notify the person in charge of the market and conducting the sales and the person who has purchased the livestock at the sale within a reasonable time.

(2) Whenever livestock is sold, the ownership of which is not known or cannot be determined by the livestock inspector, it may be sold as strays and the net proceeds derived from the sale shall be handled as provided in 81-8-263.

History: En. Sec. 22, Ch. 566, L. 1979.

Cross-References

Seizure of livestock — retention of livestock — sale — disposal of proceeds, 81-3-204.

81-8-263. Duties when ownership in doubt. An operator of a livestock market shall, when notified by the authorized brand inspector that there is a question as to whether any designated livestock sold through the market are lawfully owned by the consignor of the livestock, hold the proceeds received from the sale of the livestock for a reasonable time, not to exceed 30 days, to permit the consignor to establish ownership. If at the expiration of that time the consignor fails to establish lawful ownership of the livestock, the proceeds must be transmitted by the operator of the livestock market to the department. The department may dispose of the proceeds in accordance with Title 81, chapter 4, part 6, relating to the distribution of estray money, and the department's receipt for the proceeds relieves the operator of the livestock market from further responsibility for the proceeds. Proof of ownership and account of all sales of livestock must be transmitted by the authorized brand inspector to the department.

History: En. Sec. 23, Ch. 566, L. 1979; amd. Sec. 2680, Ch. 56, L. 2009.

Cross-References

Authorized stock inspector, 81-1-201, 81-3-203.

81-8-264. Livestock video auction — license to transact business — license fee — contract — renewal. (1) A livestock video auction may transact business in this state only through a licensed livestock dealer or through a livestock market that is domiciled in the state. The livestock video auction is subject to the same regulation as the domiciled livestock market.

(2) A livestock dealer or a livestock market that proposes to transact business with a livestock video auction pursuant to subsection (1) shall file an application for a license with the department on a form prescribed by the department with the following information:

(a) the nature of the business for which a license is requested;

(b) the name and address of the livestock dealer or the livestock market;

(c) the name and address of the livestock video auction; and

(d) any additional information that the department may require.

(3) The application must be accompanied by:

(a) a fee established by the department commensurate with the costs of administering 81-8-265 and this section;

(b) evidence that the department may require indicating that the livestock video auction is financially responsible and bonded to transact business and has established a custodial account for shippers' proceeds; and

(c) a copy of the contract between the licensed livestock dealer or the livestock market and the livestock video auction. The contract must provide:

(i) for reasonable access by the department to all records and documents relating to the activities of the livestock video auction; and

(ii) that the livestock dealer or the livestock market and the livestock video auction are jointly and severally liable, with the right of contribution, for all business transacted within the state.

(4) If the contract described in subsection (3)(c) is terminated, rescinded, breached, or materially altered, the livestock dealer or the livestock market shall immediately notify the department. Failure to notify the department is considered to be:

(a) a failure to keep and maintain suitable records with the department; and

(b) a false entry or statement of fact in an application filed with the department.

(5) On or before May 1 of each year, a livestock dealer or a livestock market shall renew the license by fulfilling the requirements of subsections (1) through (4).

(6) The license fee must be remitted to the state treasurer to the credit of the department.

History: En. Sec. 2, Ch. 160, L. 1995; amd. Sec. 4, Ch. 37, L. 2023.

Cross-References

Livestock taxation provisions, Title 15, ch. 24, part 9.

81-8-265. Refusal to issue or renew license — suspension or revocation. (1) The department may refuse to issue or renew a license in accordance with the provisions of 81-8-273.

(2) The department may suspend or revoke a license in accordance with the provisions of 81-8-274.

(3) If the contract between the livestock dealer or the livestock market and the livestock video auction is terminated, rescinded, breached, or otherwise materially altered by either party, the department may refuse to renew the license or may suspend or revoke the license.

History: En. Sec. 3, Ch. 160, L. 1995; amd. Sec. 5, Ch. 37, L. 2023.

81-8-266 through 81-8-270 reserved.

81-8-271. License to operate as livestock dealer — application. (1) A person may not operate as a livestock dealer without a license. A person who wishes to operate as a livestock dealer shall file with the department an application for a license to transact business on a form prescribed by the department, stating the type of license sought and the following information:

(a) the names of the persons applying for the license, together with their permanent addresses and, if the applicant is a firm, association, partnership, or corporation, the names of its directors, officers, and members, if applicable;

(b) the post-office address and principal place of business of the applicant;

(c) if the applicant is a foreign corporation, its principal place of business outside the state, the name of the state in which it is incorporated, and a statement showing that it has complied with the laws of this state relating to foreign corporations and its right to do business in this state; and

(d) proof of acquisition of a bond or its equivalent from the packers and stockyards administration of the United States department of agriculture.

(2) An application fee of $50 must be submitted with each application for a livestock dealer's license. The fee is the first annual fee if the license is granted.

(3) A person who purports to act as an agent for a livestock dealer in the purchase or sale of livestock may not engage in those business activities without a livestock dealer's license.

History: En. Sec. 25, Ch. 566, L. 1979; amd. Sec. 9, Ch. 52, L. 1985; amd. Sec. 2, Ch. 401, L. 1989; amd. Sec. 3, Ch. 11, L. 1995.

81-8-272. Issuance of livestock dealer's license. When an applicant has paid the fee and met the requirements of 81-8-271, the department shall issue to the applicant a license

which entitles the licensee to operate as a livestock dealer for a period of 1 year unless the license is suspended or revoked under this part.

History: En. Sec. 25, Ch. 566, L. 1979; amd. Sec. 10, Ch. 52, L. 1985.

81-8-273. Refusal to issue or renew license. (1) The department shall refuse to issue or renew a license if the applicant:

(a) has failed to maintain a financial condition of total assets in excess of total liabilities, including total current assets in excess of total current liabilities;

(b) is in violation of any of the provisions of this part;

(c) has knowingly made false or misleading statements as to the health or physical condition of livestock or practiced fraud or misrepresentation in connection with the buying or receiving of livestock or the selling, exchanging, soliciting, or negotiating of the sale of livestock or the weighing of the same;

(d) has failed to keep records of all purchases and sales or refused to grant inspection of such records by authorized agents of the department;

(e) is in violation of the rules adopted by the department;

(f) has failed to comply with a lawful order of the department;

(g) has been found by the department to have failed to pay, without reasonable cause, obligations incurred in connection with livestock transactions;

(h) has been suspended by the order of the secretary of agriculture of the United States department of agriculture under provisions of the Packers and Stockyards Act, 1921, as amended, 7 U.S.C. 181, et seq.; or

(i) employs a person required to be licensed whose license cannot be renewed or whose license is under suspension or revocation by the department or the United States department of agriculture.

(2) An applicant refused a license or license renewal may not apply again for 1 year following refusal unless the department determines that the applicant has met the requirements of this part.

History: En. Sec. 26, Ch. 566, L. 1979; amd. Sec. 11, Ch. 52, L. 1985; amd. Sec. 3, Ch. 401, L. 1989.

81-8-274. Suspension or revocation of license. (1) Whenever the department finds that a livestock dealer has violated the provisions of this part or rules adopted under this part, the department may, by order, suspend the license of the person for a period not to exceed 1 year, and if the violation is repeated, the department may, by order, after hearing, permanently revoke the license of the person.

(2) Before a license issued under this part may be suspended or revoked, the licensee must be furnished with a copy of the complaint and a hearing must be held before the department to determine whether the license should be suspended or revoked. The licensee must be given notice of the time and the place of the hearing. The notice may be served by certified mail at the post-office address listed in the application. The hearing must be held not less than 10 days or more than 30 days after the mailing of the notice. At the time and place set for the hearing, the department shall take and receive evidence, under oath, with respect to the complaint and, upon the evidence received, shall promptly dismiss the proceedings or revoke or suspend the license.

History: En. Sec. 29, Ch. 566, L. 1979; amd. Sec. 12, Ch. 52, L. 1985; amd. Sec. 2681, Ch. 56, L. 2009.

Cross-References

Montana Administrative Procedure Act — contested cases, Title 2, ch. 4, part 6.

81-8-275. Termination of license. A license issued under this part terminates at the close of business on May 1 of each year following the issuance of the license unless the annual fee has been paid.

History: En. Sec. 30, Ch. 566, L. 1979; amd. Sec. 4, Ch. 401, L. 1989.

81-8-276. Annual fee and financial statement. Livestock dealers shall pay an annual fee established by the department and when requested by the department shall supply a current financial statement. The fee is payable on May 1 to the state treasurer to the credit of the department.

History: En. Sec. 25, Ch. 566, L. 1979; amd. Sec. 16, Ch. 444, L. 1983; amd. Sec. 13, Ch. 52, L. 1985; amd. Sec. 5, Ch. 401, L. 1989.

81-8-277. Repealed. Sec. 7, Ch. 401, L. 1989.
History: En. Sec. 27, Ch. 566, L. 1979; amd. Sec. 14, Ch. 52, L. 1985.

81-8-278. Records. A livestock dealer shall maintain records that disclose all purchases and sales of livestock. A livestock dealer shall, at all reasonable times, give the department access to and let the department copy any of the records relating to the dealer's business.
History: En. Sec. 28, Ch. 566, L. 1979; amd. Sec. 15, Ch. 52, L. 1985; amd. Sec. 2682, Ch. 56, L. 2009.

81-8-279. Penalties. (1) A person who violates any provision of 81-8-271 through 81-8-273, 81-8-276, or 81-8-278 or rules adopted by the department to implement those sections is guilty of a misdemeanor and upon conviction shall be fined not less than $250 or more than $1,000 or imprisoned for not more than 6 months, or both.

(2) Of all fines assessed and collected under this section, except those assessed and collected in a justice's court, 50% shall be paid into the state treasury and credited to the special revenue fund for the use of the department and 50% shall be paid into the general revenue fund of the county in which the conviction occurred.
History: En. Sec. 31, Ch. 566, L. 1979; amd. Sec. 16, Ch. 52, L. 1985; amd. Sec. 57, Ch. 557, L. 1987; amd. Sec. 6, Ch. 401, L. 1989.

Cross-References
Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Part 3
Security Interests Concerning Livestock

Part Cross-References
U.C.C. — secured transactions, Title 30, ch. 9A.

81-8-301. Notices of security agreements — renewals — assignments. (1) The department of livestock shall accept and file notices of security agreements, renewals, assignments, and satisfactions covering livestock owned by a person, firm, corporation, or association and bearing its recorded brand and shall list the notices on the official records of marks and brands kept by it. The department shall transfer a copy of the notices and their accompanying brands to the central livestock markets. All forms on which the notices are given shall be prescribed by the department and furnished by the secured party who gives the notice. A livestock market to which livestock is shipped may not be held liable to any secured party for the proceeds of livestock sold through the livestock market by the debtor unless notice of the security agreement is filed and a copy is transferred as hereinbefore provided. The department of livestock may not be held liable to any secured party for the proceeds of livestock sold through a livestock market by the debtor.

(2) Notices of security agreements must be renewed every 5 years commencing on January 1, 1983, by notifying the department in a manner prescribed by it and by paying the fee set pursuant to 81-8-304 not more than 30 days before or 90 days after January 1.

(3) Assignments of security interests must be renewed every 5 years commencing on January 1, 1983, by notifying the department and paying the fee set pursuant to 81-8-304 not more than 30 days before or 90 days after January 1.

(4) Failure to comply with the provisions of subsection (2) or (3) will result in the termination of the notice on the 91st day following the applicable January 1 without notification by the department.

(5) Satisfactions of security agreements must be filed immediately with the department of livestock.
History: En. Sec. 1, Ch. 91, L. 1935; re-en. Sec. 3308.1, R.C.M. 1935; amd. Sec. 1, Ch. 36, L. 1949; amd. Sec. 11-138, Ch. 264, L. 1963; amd. Sec. 191, Ch. 310, L. 1974; R.C.M. 1947, 52-319; amd. Sec. 1, Ch. 449, L. 1981.

81-8-302. Contents of notices. The notices must consist of a statement showing the date of security agreement; the names and addresses of the debtors and secured parties or holders and owners of the security agreement; a description of the livestock covered by the security agreement; in the case of a notice of renewal, the date of renewal; in the case of a notice of assignment of a security interest, the date of the assignment, a description of the security agreement to which the assignment is made, and the parties to the assignment; and any additional information that is required by the department. The notice of security agreement must be signed by the affected debtor or proper legal authority.

History: En. Sec. 2, Ch. 91, L. 1935; re-en. Sec. 3308.2, R.C.M. 1935; amd. Sec. 11-139, Ch. 264, L. 1963; amd. Sec. 192, Ch. 310, L. 1974; R.C.M. 1947, 52-320; amd. Sec. 4, Ch. 11, L. 1995.

81-8-303. Duty of secured parties to file satisfactions of security agreements. The secured parties, who filed notices of security agreements, renewals, and assignments with the department of livestock, as provided for in this part, shall file notices of satisfaction of the security agreements with the department immediately upon the satisfaction of the security agreement.

History: En. Sec. 3, Ch. 91, L. 1935; re-en. Sec. 3308.3, R.C.M. 1935; amd. Sec. 11-140, Ch. 264, L. 1963; amd. Sec. 193, Ch. 310, L. 1974; R.C.M. 1947, 52-321.

81-8-304. Fees. The department shall charge a fee for filing and listing the notices of security agreements for each recorded brand listed in each security agreement and for filing and listing each notice of satisfaction, renewal, or assignment of the security agreement for each recorded brand listed. The fees shall be set by rules adopted pursuant to the Montana Administrative Procedure Act, upon the basis of actual cost to the department for each brand listed. All fees shall be paid into the state special revenue fund for the use of the department.

History: En. Sec. 4, Ch. 91, L. 1935; re-en. Sec. 3308.4, R.C.M. 1935; amd. Sec. 1, Ch. 135, L. 1953; amd. Sec. 96, Ch. 147, L. 1963; amd. Sec. 11-141, Ch. 264, L. 1963; amd. Sec. 1, Ch. 12, L. 1969; amd. Sec. 194, Ch. 310, L. 1974; amd. Sec. 1, Ch. 11, L. 1977; R.C.M. 1947, 52-322; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 17, Ch. 444, L. 1983.

Cross-References

Montana Administrative Procedure Act — rulemaking provisions, Title 2, ch. 4, part 3.

81-8-305. Department of livestock not responsible for collection or payment of money under security agreements. The department of livestock, its agents and employees, are not responsible or liable to either debtor or secured party for the collection or payment of any money due the holder of any security agreement covering livestock or renewals, satisfactions, or assignments thereof as provided in this part, if this part is carried out in good faith.

History: En. Sec. 5, Ch. 91, L. 1935; re-en. Sec. 3308.5, R.C.M. 1935; amd. Sec. 11-142, Ch. 264, L. 1963; amd. Sec. 195, Ch. 310, L. 1974; R.C.M. 1947, 52-323.

81-8-306 through 81-8-310 reserved.

81-8-311. Range stock — taking possession under process. Whenever it is necessary for an officer or person charged with the service of process out of any of the courts of this state to take possession of any cattle or horses running at large and commonly known as range stock, between November 1 and the next succeeding May 15, it is a sufficient service of such process for the officer or person within 15 days after receiving the process for service to file a copy thereof with the county clerk of the county wherein such property is running at large, with a notice appended thereto stating the number as near as may be and a description of the stock by marks and brands, and stating that such property or a portion thereof, as the case may be, is attached or levied upon in pursuance of such process. Such officer or person shall make due return of the service of process.

History: En. Sec. 1, p. 111, L. 1885; re-en. Sec. 223, 1st Div. Comp. Stat. 1887; re-en. Sec. 940, C. Civ. Proc. 1895; re-en. Sec. 6693, Rev. C. 1907; re-en. Sec. 9296, R.C.M. 1921; re-en. Sec. 9296, R.C.M. 1935; R.C.M. 1947, 93-4343; amd. Sec. 9, Ch. 14, L. 1979.

81-8-312. Possession under a mortgage — how acquired. If it is necessary under the laws of this state for a party to any mortgage, assignment, bill of sale, or other contract, between November 1 and the succeeding May 15, to take possession of any cattle or horses in order to preserve the party's rights under a mortgage, assignment, bill of sale, or other contract, it is sufficient for the party to file a copy of the instrument under which the party claims, with a notice of the claim appended to the copy, with the general recorder of marks and brands within 5 days after it becomes necessary for the party to take custody and possession of the cattle or horses.

History: En. Sec. 2, p. 111, L. 1885; re-en. Sec. 224, 1st Div. Comp. Stat. 1887; re-en. Sec. 941, C. Civ. Proc. 1895; re-en. Sec. 6694, Rev. C. 1907; re-en. Sec. 9297, R.C.M. 1921; re-en. Sec. 9297, R.C.M. 1935; amd. Sec. 11-163, Ch. 264, L. 1963; R.C.M. 1947, 93-4344; amd. Sec. 2683, Ch. 56, L. 2009.

81-8-313. Limitation of period of possession. When the copy of the process or instrument, with the proper notice appended thereto, is filed as hereinbefore provided, it has the same effect as if actual possession of said cattle and horses had been taken by the officer or

person charged with the execution of such process, or the party required under said instrument to take the same, and shall continue to have such effect until actual possession of such property has been taken or had by the officer, person, or party aforesaid; provided, that such actual possession be had or taken prior to August 1 next succeeding.

History: En. Sec. 3, p. 112, L. 1885; re-en. Sec. 225, 1st Div. Comp. Stat. 1887; re-en. Sec. 942, C. Civ. Proc. 1895; re-en. Sec. 6695, Rev. C. 1907; re-en. Sec. 9298, R.C.M. 1921; re-en. Sec. 9298, R.C.M. 1935; R.C.M. 1947, 93-4345.

81-8-314. Duty of county clerk and recorder of marks and brands to record papers. It is the duty of the county clerk and of the general recorder of marks and brands to file all papers deposited with them for that purpose, and required to be filed under the provisions of 81-8-311 through 81-8-313, and preserve the same as other records of their offices are preserved, and furnish to persons making inquiry about such files all necessary information concerning the same.

History: En. Sec. 4, p. 112, L. 1885; re-en. Sec. 226, 1st Div. Comp. Stat. 1887; re-en. Sec. 943, C. Civ. Proc. 1895; re-en. Sec. 6696, Rev. C. 1907; re-en. Sec. 9299, R.C.M. 1921; re-en. Sec. 9299, R.C.M. 1935; amd. Sec. 11-164, Ch. 264, L. 1963; R.C.M. 1947, 93-4346.

81-8-315. Sale of property under supplementary writ. When an officer into whose hands a writ of execution is placed has served the writ in accordance with 81-8-311 and made a return in accordance with the facts, at any time after service and return, within the time limited as provided in 81-8-313 to hold the property taken or levied upon under the writ, another writ of execution may be issued, which must be supplementary to the first writ, and in pursuance of which the officer or person charged with the service of the substitute writ may sell the property held by the first writ as provided in this part.

History: En. Sec. 5, p. 113, L. 1885; re-en. Sec. 227, 1st Div. Comp. Stat. 1887; re-en. Sec. 944, C. Civ. Proc. 1895; re-en. Sec. 6697, Rev. C. 1907; re-en. Sec. 9300, R.C.M. 1921; re-en. Sec. 9300, R.C.M. 1935; R.C.M. 1947, 93-4347; amd. Sec. 2684, Ch. 56, L. 2009.

Cross-References

Execution and return of writ, Title 25, ch. 13, part 4.

Part 4
Sale of Baby Animals

81-8-401. Certain dealings in baby animals unlawful. (1) Except as provided in subsection (2), it is unlawful for any person, firm, or corporation to:

(a) sell, offer for sale, barter, or give away for commercial purposes baby chickens, ducklings, or other fowl, under 3 weeks of age, or rabbits under 2 months of age, as pets, toys, premiums, or novelties;

(b) color, dye, stain, or otherwise change the natural color of baby chickens, ducklings, or other fowl or rabbits; or

(c) bring or transport the same into the state.

(2) This section shall not be construed to prohibit the sale, dyeing, staining, or otherwise changing of the natural color, or display of such baby chickens, ducklings, or other fowl or such rabbits in proper facilities by breeders or stores engaged in the business of selling for purposes of breeding and raising.

History: En. 3-2110 by Sec. 1, Ch. 233, L. 1974; R.C.M. 1947, 3-2110; amd. Sec. 1, Ch. 143, L. 1985.

81-8-402. Penalties. Violation of 81-8-401 is a misdemeanor and any person, firm, or corporation, other than one excepted in 81-8-401(2), violating any of the provisions thereof is, upon conviction, subject to a fine not exceeding the sum of $100 or imprisonment for a period not exceeding 30 days, or both.

History: En. 3-2111 by Sec. 2, Ch. 233, L. 1974; R.C.M. 1947, 3-2111; amd. Sec. 2, Ch. 143, L. 1985.

Part 5
Sale of Registered Livestock

Part Cross-References

Livestock taxation provisions, Title 15, ch. 24, part 9.

81-8-501. Sale of animals under false registration certificates — changing markings — auctioneer. (1) No person, company, or corporation shall:

(a) sell to another person or persons any animal with a certificate of registration or breeding that does not belong to said animal;

(b) change in any way the certificate of registration or breeding of any animal;

(c) falsely represent any production record of any cow or of any dam specified in any registration certificate;

(d) change the markings of any animal with the intent to deceive the purchaser.

(2) This section shall not apply to any auctioneer or agent acting in good faith under the direction of the owner.

History: En. Sec. 5, Ch. 6, L. 1913; re-en. Sec. 3355, R.C.M. 1921; amd. Sec. 1, Ch. 68, L. 1933; re-en. Sec. 3355, R.C.M. 1935; R.C.M. 1947, 46-1205.

81-8-502. Penalty. Any person, persons, company, or corporation violating 81-8-501 shall be punished by a fine of not less than $25 or more than $500 or by imprisonment of not less than 10 days or more than 6 months or by both fine and imprisonment.

History: En. Sec. 6, Ch. 6, L. 1913; re-en. Sec. 3356, R.C.M. 1921; re-en. Sec. 3356, R.C.M. 1935; R.C.M. 1947, 46-1206.

81-8-503. Expenditures for purebred livestock shows and sales. A board of county commissioners may expend annually from the general fund of the county an amount for the purpose of conducting special purebred livestock shows and special purebred livestock sales within the county.

History: En. Sec. 1, Ch. 60, L. 1945; R.C.M. 1947, 46-2201; amd. Sec. 238, Ch. 574, L. 2001.

81-8-504. Tax levy authorized. For the purpose of defraying the costs of purebred livestock shows and purebred livestock sales, the county commissioners may, subject to 15-10-420, levy a tax on the taxable value of all taxable property in the county. The taxes must be paid into the general fund of the county.

History: En. Sec. 2, Ch. 60, L. 1945; R.C.M. 1947, 46-2202; amd. Sec. 150, Ch. 584, L. 1999; amd. Sec. 239, Ch. 574, L. 2001; amd. Sec. 20, Ch. 453, L. 2005.

Part 6
Pork Research and Marketing
(Repealed)

81-8-601. Repealed. Sec. 1, Ch. 21, L. 1995.

History: En. 46-3101 by Sec. 1, Ch. 484, L. 1975; R.C.M. 1947, 46-3101.

81-8-602. Repealed. Sec. 1, Ch. 21, L. 1995.

History: En. 46-3102 by Sec. 2, Ch. 484, L. 1975; R.C.M. 1947, 46-3102.

81-8-603. Repealed. Sec. 1, Ch. 21, L. 1995.

History: En. 46-3103 by Sec. 4, Ch. 484, L. 1975; R.C.M. 1947, 46-3103; amd. Sec. 18, Ch. 444, L. 1983.

81-8-604. Repealed. Sec. 1, Ch. 21, L. 1995.

History: En. 46-3104 by Sec. 5, Ch. 484, L. 1975; R.C.M. 1947, 46-3104.

81-8-605. Repealed. Sec. 1, Ch. 21, L. 1995.

History: En. 46-3105 by Sec. 6, Ch. 484, L. 1975; R.C.M. 1947, 46-3105; amd. Sec. 1, Ch. 291, L. 1981.

81-8-606. Repealed. Sec. 1, Ch. 21, L. 1995.

History: En. 46-3106 by Sec. 7, Ch. 484, L. 1975; R.C.M. 1947, 46-3106.

81-8-607. Repealed. Sec. 1, Ch. 21, L. 1995.

History: En. 46-3107 by Sec. 8, Ch. 484, L. 1975; R.C.M. 1947, 46-3107; amd. Sec. 2, Ch. 291, L. 1981; amd. Sec. 1, Ch. 180, L. 1985.

81-8-608. Repealed. Sec. 1, Ch. 21, L. 1995.

History: En. 46-3108 by Sec. 9, Ch. 484, L. 1975; R.C.M. 1947, 46-3108.

81-8-609. Repealed. Sec. 1, Ch. 21, L. 1995.

History: En. 46-3109 by Sec. 10, Ch. 484, L. 1975; R.C.M. 1947, 46-3109; amd. Sec. 10, Ch. 14, L. 1979.

81-8-610. Repealed. Sec. 1, Ch. 21, L. 1995.

History: En. 46-3110 by Sec. 11, Ch. 484, L. 1975; R.C.M. 1947, 46-3110; amd. Sec. 3, Ch. 291, L. 1981; amd. Sec. 2, Ch. 277, L. 1983; amd. Sec. 2, Ch. 180, L. 1985; amd. Sec. 13, Ch. 700, L. 1989.

81-8-611. Repealed. Sec. 1, Ch. 21, L. 1995.
History: En. 46-3111 by Sec. 12, Ch. 484, L. 1975; R.C.M. 1947, 46-3111.

81-8-612. Repealed. Sec. 1, Ch. 21, L. 1995.
History: En. 46-3112 by Sec. 13, Ch. 484, L. 1975; R.C.M. 1947, 46-3112.

81-8-613. Repealed. Sec. 4, Ch. 291, L. 1981.
History: En. 46-3113 by Sec. 14, Ch. 484, L. 1975; R.C.M. 1947, 46-3113.

Part 7
Quality Label

81-8-701. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Agricultural and food product" includes a horticultural, viticultural, dairy, livestock, poultry, bee, other farm or garden product, fish or fishery product, and other foods.

(2) "Continuous official inspection" means that an employee or a licensed representative of the department of agriculture or the department of livestock or the United States department of agriculture regularly and continuously examines the commodity as it is being packed so as to have knowledge of the quality that goes into each package.

(3) "Person" includes an individual, partnership, association, union, or corporation.

History: En. Sec. 5, Ch. 290, L. 1947; amd. Sec. 43, Ch. 310, L. 1974; R.C.M. 1947, 3-2505.

81-8-702. Montana quality label. The department of livestock may make use of an outline map of the state of Montana and the word "Montana", printed, lithographed, inscribed, engraved, or otherwise impressed on the labels, tags, seals, or containers of agricultural or food products by a person who has taken advantage of the continuous official inspection service offered by the department of livestock as an indication that the product has been inspected by the officers, agents, or licensed inspectors of the department and that the products are of the quality and description as indicated on the label, tag, seal, or container. The outline map with the word "Montana", when made use of under this part, is known as the "Montana quality label". When an authorized department, agent, or officer of the United States collaborates with the department of livestock in the inspection of a product, the Montana quality label may, with the consent of the appropriate department, agency, or officer of the United States, be superimposed on an outline map of the United States on the label, tag, seal or container, indicating inspectional collaboration between the department of livestock and the department, agency, or officer of the United States.

History: En. Sec. 1, Ch. 290, L. 1947; amd. Sec. 39, Ch. 310, L. 1974; R.C.M. 1947, 3-2501; amd. Sec. 2685, Ch. 56, L. 2009.

81-8-703. Limitation on use of label. The Montana quality label may not be used except under the rules made for its use by the department of livestock, and it may not be used on the label, tag, seal, container, or product of a farm, factory, mill, or other producing, processing, packing, preparing, or dressing establishment unless the product is produced, processed, packed, prepared, or dressed under continuous official inspection.

History: En. Sec. 2, Ch. 290, L. 1947; amd. Sec. 40, Ch. 310, L. 1974; R.C.M. 1947, 3-2502.

81-8-704. Procurement and use of labels — information concerning — disposal of moneys. The department of livestock may make, print, or otherwise prepare a quantity of labels, tags, and seals with the Montana quality label printed, lithographed, inscribed, engraved, or impressed on them sufficient to supply the demand for them. The department may furnish labels, tags, and seals at reasonable prices to a producer, processor, packer, or dresser who has been granted the continuous official inspection service. This part does not preclude the department from permitting, under its rules, a producer, processor, packer, or dresser to make, prepare, or cause to be made or prepared the labels, tags, or seals to be used on the person's own product or to print, stamp, or otherwise place or cause to be placed the Montana quality label on products or containers that have been subject to continuous inspection if the labels, tags, seals, stamps, or other devices are of a design that the department prescribes. The department may, in cooperation with the United States department of agriculture or otherwise, make use of available and appropriate means to disseminate information concerning the Montana quality label and the products that may lawfully bear it and to popularize its use. All money derived

from furnishing the labels, tags, and seals or from permitting the use of the Montana quality label must be deposited in the state treasury to the credit of the general fund.

History: En. Sec. 3, Ch. 290, L. 1947; amd. Sec. 44, Ch. 147, L. 1963; amd. Sec. 41, Ch. 310, L. 1974; R.C.M. 1947, 3-2503; amd. Sec. 2686, Ch. 56, L. 2009.

Cross-References

State treasury general fund structure, 17-2-102.

81-8-705. Wrongful use of label — penalty — injunction — prosecutions. (1) A person who uses the Montana quality label in violation of this part, or who, with the intent to mislead or deceive, uses an imitation, counterfeit, or likeness thereof on the label, tag, seal, container, sign, or otherwise on any product which is sold or offered for sale or who uses the Montana quality label or, with intent to mislead or deceive, uses an imitation, counterfeit, or likeness thereof on or in connection with an offer to sell or advertisement for the sale or use of any product which does not in fact lawfully bear the Montana quality label is guilty of a misdemeanor and shall be fined not less than $10 or more than $500.

(2) The word "Montana" may not be used on a brand or label not of No. 1 quality, its equivalent, or better.

(3) A district court in this state has jurisdiction to enjoin the use of the Montana quality label or an imitation, counterfeit, or likeness thereof used in violation of this part.

(4) The department of livestock may cause prosecutions for violations of this part, as well as the injunction proceedings under this section, to be instituted through the attorneys for the state or the counties and cities or otherwise in its discretion.

History: En. Sec. 4, Ch. 290, L. 1947; amd. Sec. 42, Ch. 310, L. 1974; R.C.M. 1947, 3-2504.

Cross-References

General duties of Attorney General, 2-15-501.
General duties of city attorney, 3-11-301; Title 7, ch. 4, part 46.
General duties of County Attorney, 7-4-2716, 7-4-2717.

Part 8
Beef Research and Marketing
(Repealed)

81-8-801. Repealed. Sec. 21, Ch. 166, L. 1989.
History: En. Sec. 1, Ch. 491, L. 1981.

81-8-802. Repealed. Sec. 21, Ch. 166, L. 1989.
History: En. Sec. 2, Ch. 491, L. 1981.

81-8-803. Repealed. Sec. 21, Ch. 166, L. 1989.
History: En. Sec. 3, Ch. 491, L. 1981.

81-8-804. Repealed. Sec. 21, Ch. 166, L. 1989.
History: En. Sec. 4, Ch. 491, L. 1981; amd. Sec. 1, Ch. 140, L. 1987.

81-8-805. Repealed. Sec. 21, Ch. 166, L. 1989.
History: En. Sec. 5, Ch. 491, L. 1981; amd. Sec. 2, Ch. 277, L. 1983; amd. Sec. 14, Ch. 700, L. 1989.

Part 9
Beef Promotion and Marketing

81-8-901. Beef promotion and marketing — powers and duties of department — contract. (1) The department shall:

(a) enter into a contract with the Montana beef council to collect on behalf of the beef council an assessment of $1 for each head of Montana cattle sold as established in the national Beef Promotion and Research Act of 1985, 7 U.S.C. 2901 through 2911, also referred to as the national beef checkoff, and 7 CFR, part 1260, subpart A;

(b) adopt rules necessary for the administration of this section.

(2) (a) Except as provided in subsection (2)(b), the contract agreed to under this section between the department and the Montana beef council must include a provision that the beef council shall pay a fee, not to exceed 5% of the total checkoff funds collected by department employees and deposited in the state treasury, to reimburse the department for all expenses directly incurred through collection of the checkoff as verified by the legislative auditor during regularly scheduled financial compliance audits.

(b) The department is not obligated under this section or any other state law to contract for collection of the fee if the department's direct collection costs as verified by the legislative auditor exceed 5% of the checkoff funds collected by department employees and deposited in the state treasury.

History: En. Sec. 1, Ch. 102, L. 1995; amd. Sec. 2, Ch. 417, L. 2011; amd. Sec. 1, Ch. 100, L. 2013.

Cross-References

Department of Livestock, 2-15-3101.

81-8-902. Department not liable for collection of assessment — inspection. (1) The department and its agents and employees are not responsible or liable for a livestock owner's compliance with the requirement to pay the assessment due to the Montana beef council pursuant to 81-8-901 if 81-8-901 and this section are carried out in good faith.

(2) The department may not refuse to inspect livestock if the livestock owner refuses to pay the assessment imposed under 81-8-901.

History: En. Sec. 2, Ch. 102, L. 1995; amd. Sec. 3, Ch. 417, L. 2011.

CHAPTER 9
SLAUGHTER

Part 1 — General Provisions

81-9-101. Repealed.
81-9-102. Repealed.
81-9-103. Repealed.
81-9-104. Terminated.
81-9-105 through 81-9-110 reserved.
81-9-111. Hide certificates — inspection of hides before disposal — person slaughtering cattle or horses to exhibit hides.
81-9-112. Inspection and marking of hides and meat of slaughtered cattle or horses — records — bill of sale — when inspection not necessary.
81-9-113. Fees for inspection.
81-9-114. Duty to report violations.
81-9-115. Unlawful to purchase uninspected hide or carcass — exception.
81-9-116. Officers' authority concerning enforcement — seizure and sale of meat held in violation.
81-9-117. Repealed.
81-9-118. Penalties for violation or falsifying records.

Part 2 — Slaughterhouses Meat and Poultry Inspection

81-9-201. Meat establishment license — fees and renewals.
81-9-202. Exceptions of certain producers of meats.
81-9-203. Repealed.
81-9-204. Repealed.
81-9-205. Repealed.
81-9-206. Repealed.
81-9-207. Repealed.
81-9-208 through 81-9-215 reserved.
81-9-216. Short title.
81-9-217. Definitions.
81-9-218. Exemptions.
81-9-219. Application.
81-9-220. Rules.
81-9-221 through 81-9-225 reserved.
81-9-226. Chief meat inspector — deputies — qualifications.
81-9-227. Application for state meat inspection service — assignment of establishment number.
81-9-228. Inspection stamps.
81-9-229. Assignment of inspectors.
81-9-230. Antemortem and postmortem inspection required.
81-9-231. Condemnation and appeal.
81-9-232. Regulation of equine carcasses or products.
81-9-233. Cooperation with state and federal authorities.
81-9-234. Violations — penalties.
81-9-235. Repealed.
81-9-236. Injunction.
81-9-237 through 81-9-239 reserved.
81-9-240. Equine slaughter or processing facilities — no injunction to stop — damages allowed for delay.
81-9-241. Judicial review of equine slaughter or processing facilities — surety bond — attorney fees — venue.

Part 3 — Rendering or Disposal Plants

81-9-301. Licensing of rendering or disposal plants.
81-9-302. Power of department to adopt and enforce rules.
81-9-303. Power of department to restrain operation of rendering plant.
81-9-304. Power of department to revoke license of rendering plant.
81-9-305. Power to administer oaths, subpoena witnesses, and receive evidence.
81-9-306. Penalty for violation.
81-9-307 through 81-9-310 reserved.
81-9-311. Dead or fallen animal rendering plants — definitions.
81-9-312. Identification tags.
81-9-313. Dead or fallen animal records.
81-9-314. Animals to be tagged.
81-9-315. Production of dead or fallen animal record on demand — animal not to be removed during transportation — investigation.
81-9-316. Disposal of hides — inspection — filing of record.
81-9-317. Penalty.

Part 4 — Hide Dealers

81-9-401. Definitions.
81-9-402. Hide certificate — identification.
81-9-403. Seizure and sale of hides when ownership cannot be determined — disposition of proceeds.
81-9-404 through 81-9-410 reserved.
81-9-411. Hide dealer or buyer's license fee — disposition of proceeds.
81-9-412. License revocation.
81-9-413 through 81-9-420 reserved.
81-9-421. Falsifying hide certificate or failure to affix tag deemed a misdemeanor.
81-9-422. Acting without a license a misdemeanor.
81-9-423. Mutilation or concealment of hides a felony.
81-9-424. Repealed.

Chapter Cross-References

Municipal regulation of foodstuffs, 7-21-4202.
Livestock per capita tax levy, 15-24-921.
Montana Food, Drug, and Cosmetic Act, Title 50, ch. 31, parts 1 and 2.
Adulterated food, 50-31-202.
Retail and wholesale food manufacturing establishment defined not to include slaughterhouse or packing plant, 50-50-102, 50-57-102.
Frozen food lockers, Title 50, ch. 50, part 4.
Duties of state stock inspectors and deputy stock inspectors, 81-3-203.

Part 1
General Provisions

81-9-101. Repealed. Sec. 24, Ch. 577, L. 1987.

History: En. Sec. 1, Ch. 172, L. 1931; re-en. Sec. 3298.16, R.C.M. 1935; amd. Sec. 1, Ch. 42, L. 1943; amd. Sec. 86, Ch. 310, L. 1974; R.C.M. 1947, 46-501; amd. Sec. 1, Ch. 234, L. 1979.

81-9-102. Repealed. Sec. 24, Ch. 577, L. 1987.

History: (1) thru (5)En. Sec. 2, Ch. 172, L. 1931; re-en. Sec. 3298.17, R.C.M. 1935; amd. Sec. 2, Ch. 42, L. 1943; Sec. 46-502, R.C.M. 1947; (6)En. Sec. 3, Ch. 172, L. 1931; re-en. Sec. 3298.18, R.C.M. 1935; amd. Sec. 1, Ch. 78, L. 1941; amd. Sec. 1, Ch. 67, L. 1959; Sec. 46-504, R.C.M. 1947; R.C.M. 1947, 46-502, 46-504(part).

81-9-103. Repealed. Sec. 24, Ch. 577, L. 1987.

History: En. Sec. 8, Ch. 172, L. 1931; re-en. Sec. 3298.23, R.C.M. 1935; R.C.M. 1947, 46-512.

81-9-104. Terminated. Sec. 4, Ch. 410, L. 2021.

History: En. Sec. 1, Ch. 410, L. 2021.

81-9-105 through 81-9-110 reserved.

81-9-111. Hide certificates — inspection of hides before disposal — person slaughtering cattle or horses to exhibit hides. (1) A person or persons, firm, corporation, or association slaughtering cattle or horses for its own use shall before selling, destroying, or otherwise disposing of the hide or hides from the cattle or horses have the hide or hides inspected by an officer authorized to make the inspection and secure a certificate of inspection as provided for in this part.

(2) A person or persons, firm, corporation, or association may not sell, offer for sale, destroy, or otherwise dispose of a hide or hides from slaughtered cattle or horses that have not been inspected and identified by an authorized inspector.

(3) It is the duty of a person or persons, firm, corporation, or association slaughtering cattle or horses for personal use or otherwise, upon demand of an authorized inspector, to exhibit for inspection the cattle or horse hide or hides, a certificate issued by a hide buyer, or evidence of inspection by an authorized inspector.

History: En. Sec. 4, Ch. 172, L. 1931; re-en. Sec. 3298.19, R.C.M. 1935; amd. Sec. 1, Ch. 47, L. 1939; amd. Sec. 2, Ch. 37, L. 1961; R.C.M. 1947, 46-508; amd. Sec. 2687, Ch. 56, L. 2009; amd. Sec. 8, Ch. 416, L. 2009.

81-9-112. Inspection and marking of hides and meat of slaughtered cattle or horses — records — bill of sale — when inspection not necessary. (1) All slaughtering establishments required to be licensed under 81-9-201 shall maintain the hide of an animal in its entirety with tail and ears attached for each animal slaughtered until inspected by a state or deputy state stock inspector in the county where the animal was slaughtered. The inspector shall mark the hide in the manner prescribed by the department. This inspection may be waived for animals inspected by a state or deputy state stock inspector on a preslaughter inspection.

(2) The inspector shall keep a record and issue a certificate of inspection as specified by the department, giving the name and address of the establishment or person, the serial number of the inspection of the hide, the brand on the hide, if applicable, the date of inspection, and the place where the inspection was made. The inspector shall forward a copy of the inspection certificate to the department and issue one copy to the person requesting the inspection.

(3) When ownership of the hide presented is claimed on a bill of sale, the officer making the inspection shall demand and must receive the original bill of sale and shall attach it to the inspector's certificate sent to the county clerk and recorder. When the bills of sale cover cattle or horses not included in the inspection, the inspector shall issue to the owner of the bill of sale a receipt for the bill of sale. The receipt must describe the balance of the cattle or horses covered by the original bill of sale.

History: Ap.p. Sec. 3, Ch. 172, L. 1931; re-en. Sec. 3298.18, R.C.M. 1935; amd. Sec. 1, Ch. 78, L. 1941; amd. Sec. 1, Ch. 37, L. 1961; amd. Sec. 87, Ch. 310, L. 1974; Sec. 46-503, R.C.M. 1947; Ap.p. Sec. 3, Ch. 172, L. 1931; re-en. Sec. 3298.18, R.C.M. 1935; amd. Sec. 1, Ch. 78, L. 1941; amd. Sec. 1, Ch. 67, L. 1959; Sec. 46-504, R.C.M. 1947; R.C.M. 1947, 46-503, 46-504(part); amd. Sec. 2, Ch. 234, L. 1979; amd. Sec. 19, Ch. 577, L. 1987; amd. Sec. 2688, Ch. 56, L. 2009; amd. Sec. 9, Ch. 416, L. 2009; amd. Sec. 1, Ch. 222, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 1, Ch. 222, L. 2025. Amendment effective April 17, 2025.

81-9-113. Fees for inspection. The state or deputy state stock inspector making the inspection required by 81-9-112 shall collect a fee established by the department for each head inspected, plus all necessary expenses. State stock inspectors shall promptly remit all fees and expenses collected under this section to the department for deposit in the state special revenue fund. Deputy state stock inspectors shall keep their fees and expenses.

History: En. Sec. 2, Ch. 78, L. 1941; R.C.M. 1947, 46-505; amd. Sec. 3, Ch. 234, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 19, Ch. 444, L. 1983.

81-9-114. Duty to report violations. A person required to be licensed under 81-9-201 shall report any violation of 81-9-112 to the department or the sheriff of the county where the violation occurred and of which the person has knowledge. Upon failure to do so, the person's license must be revoked and a license may not again be issued to the person until the expiration of 1 year from the date of revocation.

History: En. Sec. 4, Ch. 78, L. 1941; R.C.M. 1947, 46-507; amd. Sec. 20, Ch. 577, L. 1987; amd. Sec. 1, Ch. 200, L. 1989; amd. Sec. 2689, Ch. 56, L. 2009.

81-9-115. Unlawful to purchase uninspected hide or carcass — exception. A person, firm, corporation, or association may not purchase the hide or carcass or any part of livestock slaughtered in a facility licensed pursuant to 81-9-201 without the inspection or identification required by this part. The provision of this section does not apply to a person who purchases from a licensed meat establishment meat in quantities less than one quarter of an animal.

History: En. Sec. 5, Ch. 172, L. 1931; re-en. Sec. 3298.20, R.C.M. 1935; R.C.M. 1947, 46-509; amd. Sec. 21, Ch. 577, L. 1987; amd. Sec. 10, Ch. 416, L. 2009.

81-9-116. Officers' authority concerning enforcement — seizure and sale of meat held in violation. An officer having authority to make the inspection provided for in this part may enter into and inspect meat establishments required to be licensed under 81-9-201 or places where meat is handled in quantities, for the purpose of determining whether the provisions of this part have been complied with. If meat is found that is being held in violation of the provisions of this part, the officers may seize the meat. All seized meat must be sold under the direction of a stock inspector, sheriff, or other officer authorized, at either public or private sale, for the best price obtainable, and the proceeds must be paid to the county treasurer of the county in which the meat is seized for the benefit of the general fund of the county.

History: En. Sec. 6, Ch. 172, L. 1931; re-en. Sec. 3298.21, R.C.M. 1935; R.C.M. 1947, 46-510; amd. Sec. 22, Ch. 577, L. 1987; amd. Sec. 11, Ch. 416, L. 2009.

81-9-117. Repealed. Sec. 24, Ch. 577, L. 1987.

History: En. Sec. 7, Ch. 172, L. 1931; re-en. Sec. 3298.22, R.C.M. 1935; R.C.M. 1947, 46-511.

81-9-118. Penalties for violation or falsifying records. Any person who violates any of the provisions of this part or who willfully falsifies any of the records required by this part to be kept shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $100 or more than $500 or by imprisonment in the county jail for a period of not less than 30 days or more than 6 months or by such fine and imprisonment for the first offense and for each subsequent offense shall be deemed guilty of a felony and punished by a fine of not more than $50,000 or imprisonment in the state prison for not less than 1 year or more than 5 years, or both.

History: En. Sec. 9, Ch. 172, L. 1931; re-en. Sec. 3298.24, R.C.M. 1935; R.C.M. 1947, 46-513; amd. Sec. 7, Ch. 198, L. 1981.

Part 2
Slaughterhouses
Meat and Poultry Inspection

Part Cross-References

Municipal regulation of foodstuffs, 7-21-4202.

Regulation of location of businesses, factories, and steam boilers, 7-21-4204.

81-9-201. Meat establishment license — fees and renewals. (1) Except as provided in 50-49-203, it is unlawful for a person, firm, or corporation to engage in the business of slaughtering livestock or poultry, including the operation of a mobile slaughter facility as defined in 81-9-217, or processing, storing, or wholesaling livestock or poultry products without having a license issued by the department. The department shall establish an annual fee for a license issued under this section, to be paid into the state special revenue fund for the use of the department.

(2) All licenses expire each year on the anniversary date established by rule by the board of review established in 30-16-302 and must be renewed by the department on request of the licensee. However, when the department finds that the establishment for which the license is issued is not conducted in accordance with the rules and orders of the board made under 81-2-102, the department shall revoke the license and may not renew it until the establishment is in a sanitary condition in accordance with department rules.

(3) Investor-owned equine slaughter or processing facilities must be licensed pursuant to this section.

(4) A person, firm, or corporation violating this section or any rule or order promulgated by authority of 81-2-102 is guilty of a misdemeanor and upon conviction shall be fined not more than $500.

History: En. Sec. 26, Ch. 262, L. 1921; re-en. Sec. 3285, R.C.M. 1921; re-en. Sec. 3285, R.C.M. 1935; amd. Sec. 79, Ch. 310, L. 1974; amd. Sec. 22, Ch. 12, L. 1977; R.C.M. 1947, 46-235; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 20, Ch. 444, L. 1983; amd. Sec. 23, Ch. 577, L. 1987; amd. Sec. 18, Ch. 366, L. 1997; amd. Sec. 1, Ch. 494, L. 2005; amd. Sec. 12, Ch. 416, L. 2009; amd. Sec. 12, Ch. 320, L. 2021; amd. Sec. 26, Ch. 53, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 26, Ch. 53, L. 2025. Amendment effective October 1, 2025.

81-9-202. Exceptions of certain producers of meats. (1) The owners or operators of slaughterhouses, packinghouses, meat depots, or other places of business engaged in the production, storage, or transportation of meats or meat foods are not required to procure a license from the department of public health and human services for the business of production, storage, or transportation of these food products.

(2) This section does not limit the:

(a) supervision or regulation by the department of public health and human services of the sanitary condition of a restaurant, hotel, boardinghouse, or retail market or the products sold or offered for sale at those facilities; or

(b) duties imposed by law on the department of public health and human services to make sanitary rules for the eradication or control of an epidemic of human disease that may exist in a community.

History: En. Sec. 24, Ch. 262, L. 1921; re-en. Sec. 3283, R.C.M. 1921; re-en. Sec. 3283, R.C.M. 1935; amd. Sec. 77, Ch. 310, L. 1974; amd. Sec. 20, Ch. 12, L. 1977; R.C.M. 1947, 46-233(part); amd. Sec. 349, Ch. 418, L. 1995; amd. Sec. 549, Ch. 546, L. 1995.

81-9-203. Repealed. Sec. 24, Ch. 577, L. 1987.

History: (1)En. Sec. 10, Ch. 262, L. 1921; re-en. Sec. 3269, R.C.M. 1921; re-en. Sec. 3269, R.C.M. 1935; amd. Sec. 62, Ch. 310, L. 1974; Sec. 46-216, R.C.M. 1947; (2) thru (4)En. Sec. 7, Ch. 130, L. 1911; re-en. Sec. 2584, R.C.M. 1921; re-en. Sec. 2584, R.C.M. 1935; Sec. 27-107, R.C.M. 1947; R.C.M. 1947, 27-107, 46-216.

81-9-204. Repealed. Sec. 24, Ch. 577, L. 1987.

History: En. Sec. 1, p. 163, L. 1901; re-en. Sec. 8492, Rev. C. 1907; amd. Sec. 1, Ch. 39, L. 1917; re-en. Sec. 11243, R.C.M. 1921; re-en. Sec. 11243, R.C.M. 1935; Sec. 94-35-172, R.C.M. 1947; redes. 46-247 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 199, Ch. 310, L. 1974; R.C.M. 1974, 46-247.

81-9-205. Repealed. Sec. 24, Ch. 577, L. 1987.

History: En. 46-210.1 by Sec. 1, Ch. 190, L. 1977; R.C.M. 1947, 46-210.1.

81-9-206. Repealed. Sec. 24, Ch. 577, L. 1987.

History: (1)En. Sec. 29, Ch. 262, L. 1921; re-en. Sec. 3288, R.C.M. 1921; re-en. Sec. 3288, R.C.M. 1935; amd. Sec. 23, Ch. 12, L. 1977; Sec. 46-238, R.C.M. 1947; (2)En. Sec. 2, Ch. 39, L. 1917; re-en. Sec. 11244, R.C.M. 1921; re-en. Sec. 11244, R.C.M. 1935; 94-35-173, R.C.M. 1947; redes. 46-248 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 26, Ch. 12, L. 1977; Sec. 46-248, R.C.M. 1947; R.C.M. 1947, 46-238, 46-248.

81-9-207. Repealed. Sec. 24, Ch. 577, L. 1987.

History: En. Sec. 30, Ch. 262, L. 1921; re-en. Sec. 3289, R.C.M. 1921; re-en. Sec. 3289, R.C.M. 1935; amd. Sec. 81, Ch. 310, L. 1974; amd. Sec. 24, Ch. 12, L. 1977; R.C.M. 1947, 46-239.

81-9-208 through 81-9-215 reserved.

81-9-216. Short title. Sections 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 may be cited as the "Meat and Poultry Inspection Act".

History: En. Sec. 1, Ch. 577, L. 1987.

81-9-217. Definitions. As used in 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236, the following definitions apply:

(1) "Adulterated" means the term applied to meat if:

(a) it bears or contains a poisonous or deleterious substance that may render it injurious to health, except that if the substance is not an added substance, the product may not be considered adulterated if the quantity of the substance is insufficient to ordinarily render it injurious to health;

(b) it bears or contains, by reason of administration of any substance to the meat, an added poisonous or added deleterious substance other than a color additive, a food additive, or a pesticide chemical in or on a raw agricultural commodity, any of which may in the board's judgment make the meat unfit for human food;

(c) it is in whole or in part a raw agricultural commodity and bears or contains a pesticide chemical that is unsafe as provided in the Federal Food, Drug and Cosmetic Act;

(d) it bears or contains a food additive that is unsafe as provided in the Federal Food, Drug and Cosmetic Act;

(e) it bears or contains a color additive that is unsafe as provided in the Federal Food, Drug and Cosmetic Act; however, the meat that is not otherwise considered adulterated under

subsection (1)(c), (1)(d), or (1)(e) is considered adulterated if use of the pesticide chemical, food additive, or color additive in or on the article is prohibited by rule of the board;

(f) it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;

(g) it has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth or rendered injurious to health;

(h) it is in whole or in part the product of an animal, including poultry, that has died otherwise than by slaughter;

(i) its container is composed in whole or in part of any poisonous or deleterious substance that may render the contents injurious to health;

(j) it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to 21 U.S.C. 348; or

(k) any valuable constituent has been in whole or in part omitted or abstracted from the meat, any substance has been substituted wholly or in part for meat, damage or inferiority has been concealed in any manner, or any substance has been added to it or mixed or packed with it so as to increase its bulk or weight or make it appear better or of greater value than it is.

(2) "Cell-cultured edible product" has the same meaning as provided in 50-31-103.

(3) "Chief" means the chief meat inspector appointed as provided in 81-9-226.

(4) "Federal Food, Drug and Cosmetic Act" means 21 U.S.C. 301 through 392, as that law read on October 1, 1987.

(5) "Livestock" means cattle, buffalo, sheep, swine, goats, horses, and mules or other equines, whether alive or dead.

(6) "Livestock product" or "poultry product" means a product capable of use as human food that is wholly or partially made from meat and is not specifically exempted by rule of the board.

(7) "Meat" means the edible flesh of livestock or poultry and includes livestock and poultry products. This term does not include cell-cultured edible products as defined in this section.

(8) "Misbranded" means the term applied to meat:

(a) if its labeling is false or misleading in any particular;

(b) if it is offered for sale under the name of another food;

(c) if it is an imitation of a meat product, unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter the name of the food being imitated;

(d) if its container is so made, formed, or filled as to be misleading;

(e) if it does not bear a label showing:

(i) the name and place of business of the manufacturer, packer, or distributor; and

(ii) an accurate statement of the quantity of the product in terms of weight, measure, or numerical count. The board may adopt rules exempting small meat packages, meat not in containers, and other reasonable variations.

(f) if any word, statement, or other information required by 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 to appear on the label is not prominently placed on the label, as compared with other words, statements, designs, or devices in the labeling, and is not stated in terms that render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(g) if it is represented as a food for which a definition and standard of identity or composition has been prescribed by the rules of the board, unless:

(i) it conforms to the definition and standard; and

(ii) its label bears the name of the food specified in the definition and standard and, if required by the rules, the common names of optional ingredients present in the food, other than spices, flavoring, and coloring;

(h) if it is represented as a food for which a standard of fill of container has been prescribed by rules of the board and it falls below the standard of fill of container applicable to the food, unless its label bears, in the manner and form that the rules specify, a statement that it falls below the standard;

(i) if it is not subject to the provisions of subsection (8)(g), unless its label bears:

(i) the common or usual name of the food, if any; and

(ii) in case it is fabricated from two or more ingredients, the common or usual name of each ingredient, except that spices, flavorings, and colorings may, when authorized by the board, be designated as spices, flavorings, and colorings without naming each. To the extent that compliance with the requirements of this subsection (8)(i)(ii) is impracticable or results in deception or unfair competition, exemptions must be established by rules promulgated by the board.

(j) if it purports to be for special dietary uses, unless its label bears information concerning its vitamin, mineral, and other dietary properties as the board, after consultation with the U.S. secretary of agriculture, by rule prescribes as necessary in order to fully inform purchasers as to its value for those uses;

(k) if it bears or contains an artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact, provided that to the extent that compliance with the requirements of this subsection (8)(k) is impracticable, exemptions must be established by rules promulgated by the board; or

(l) if it fails to bear directly on the meat and on its containers, as the board may by rule prescribe, the official inspection legend and establishment number of the establishment where the product was prepared and other information that the board may require to ensure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the meat in a wholesome condition.

(9) (a) "Mobile slaughter facility" means a mobile unit that is operated by a person licensed by the board to slaughter livestock or poultry, that is capable of providing onsite slaughter services for the owner of the livestock or poultry, and at which inspection of the slaughter of livestock or poultry or the preparation of meat food products is regulated under 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236.

(b) The term does not mean a person engaged in custom slaughtering as provided in 81-9-218(2).

(10) "Official establishment" means an establishment licensed by the board at which inspection of the slaughter of livestock or poultry or the preparation of meat food products is maintained under 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236. The term includes a mobile slaughter facility.

(11) "Pesticide chemical", "food additive", "color additive", and "raw agricultural commodity" have the same meanings as provided in 21 U.S.C. 321.

(12) "Poultry" means any domesticated bird, whether alive or dead.

(13) "Prepared" means slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed.

History: En. Sec. 2, Ch. 577, L. 1987; amd. Sec. 6, Ch. 574, L. 1999; amd. Sec. 2, Ch. 494, L. 2005; amd. Sec. 6, Ch. 186, L. 2019; amd. Sec. 1, Ch. 423, L. 2023; amd. Sec. 6, Ch. 276, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 6, Ch. 276, L. 2025. Amendment effective October 1, 2025.

Cross-References

Municipal regulation of foodstuffs, 7-21-4202.

81-9-218. Exemptions. (1) The following persons are exempt from 81-9-201, 81-9-216 through 81-9-220, and 81-9-226 through 81-9-236:

(a) a person who slaughters livestock or poultry or prepares or processes livestock or poultry products for the person's own personal or household use;

(b) a person who transports dead, dying, or diseased animals or poultry for the purpose of treatment, burial, or disposal in a manner that would prevent the carcasses from being used as human food; and

(c) a producer as defined in 50-49-202 who sells homemade food or slaughters fewer than 1,000 poultry birds a year pursuant to 50-49-203 except that the producer is subject to the requirements of 9 CFR 381.10(c) and the recordkeeping requirements of 9 CFR 381.175.

(2) A person engaged in the custom slaughtering of livestock or poultry delivered by the owner for custom slaughter or a person engaged in the preparation of the carcasses and parts and meat food products of the livestock or poultry when slaughtered or prepared for exclusive use in the owner's household by the owner or members of the owner's household or the owner's

nonpaying guests or employees is exempt from 81-9-216, 81-9-217, 81-9-220, and 81-9-226 through 81-9-236 if the carcasses, parts, or meat food products or containers of the articles are:

(a) kept separate from carcasses, parts, or meat food products prepared for sale;

(b) plainly marked "Not for Sale" immediately after being slaughtered or prepared and remain plainly marked until delivered to the owner; and

(c) prepared and packaged in a sanitary manner and in a sanitary facility.

History: En. Sec. 11, Ch. 577, L. 1987; amd. Sec. 2, Ch. 200, L. 1989; amd. Sec. 2690, Ch. 56, L. 2009; amd. Sec. 13, Ch. 320, L. 2021; amd. Sec. 1, Ch. 98, L. 2023; amd. Sec. 27, Ch. 53, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 27, Ch. 53, L. 2025. Amendment effective October 1, 2025.

81-9-219. Application. The provisions of 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 apply to persons, establishments, animals, and articles regulated under the Federal Meat Inspection Act, 21 U.S.C. 601 through 695, the federal Poultry Products Inspection Act, 21 U.S.C. 451 through 470, as those acts read on March 27, 2013, or the federal Humane Methods of Slaughter Act of 1978, 7 U.S.C. 1901, 1902, 1904, 1906, and 1907, as that act read on March 27, 2007, only to the extent provided for in the federal acts.

History: En. Sec. 16, Ch. 577, L. 1987; amd. Sec. 1, Ch. 65, L. 2007; amd. Sec. 1, Ch. 92, L. 2013.

81-9-220. Rules. The board, upon the recommendation of the chief, shall adopt rules consistent with the requirements of the rules of the U.S. department of agriculture governing meat inspection. The rules must:

(1) require antemortem and postmortem inspections, quarantines, segregation, and reinspections with respect to the slaughter of livestock and poultry and the preparation of livestock and poultry products at all official establishments;

(2) require the identification of livestock and poultry and the marking and labeling of livestock or poultry products as "Montana Inspected and Passed" if they are found upon inspection not to be adulterated;

(3) require the destruction for food purposes of all livestock, poultry, livestock products, and poultry products that have been found to be adulterated;

(4) set standards for ingredients of livestock products, meat, and poultry products;

(5) set standards for labeling, marking, or branding of meat, livestock products, and poultry products;

(6) set standards for the weights or measures of meats, livestock products, and poultry products not inconsistent with standards established under Title 30, chapter 12;

(7) set standards for the filling of containers for meat, livestock products, and poultry products;

(8) regulate the false or fraudulent advertising of meat, livestock products, and poultry products;

(9) provide for periodic investigations of the sanitary conditions of each official establishment and withdraw or otherwise refuse to license and inspect those establishments where the sanitary conditions are such as to render adulterated any meat products prepared or handled in that establishment;

(10) prescribe sanitation requirements for all official establishments;

(11) require all persons subject to 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 to maintain full and complete records of all transactions involving meat, livestock products, or poultry products and to make the records available on request to the chief or the chief's inspectors at any reasonable time;

(12) prescribe additional standards, methods, and procedures that are necessary to effect the purposes of 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236; and

(13) provide for the licensing and inspection of mobile slaughter facilities to ensure that the requirements of this part are met with respect to all operations conducted at mobile slaughter facilities.

History: En. Sec. 4, Ch. 577, L. 1987; amd. Sec. 3, Ch. 494, L. 2005; amd. Sec. 2691, Ch. 56, L. 2009.

Cross-References

Montana Administrative Procedure Act — adoption and publications of rules, Title 2, ch. 4, part 3.

81-9-221 through 81-9-225 reserved.

81-9-226. Chief meat inspector — deputies — qualifications. (1) There is a chief meat inspector, who must be appointed by the board and shall serve at its pleasure.

(2) The chief shall supervise the state meat inspection program established in 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 and shall enforce the provisions of 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 to assure the public that only pure, wholesome, and unadulterated meat or meat food products are offered for sale.

(3) Upon recommendation of the chief, the board shall appoint veterinary meat inspectors and lay meat inspectors, who must be responsible to the chief and who shall conduct antemortem and postmortem inspections, enforce sanitary requirements, and perform other necessary meat inspection duties.

(4) An inspector assigned to an official establishment may not be related to the management of the establishment or have any financial interest therein.

History: En. Sec. 3, Ch. 577, L. 1987; amd. Sec. 3, Ch. 200, L. 1989.

81-9-227. Application for state meat inspection service — assignment of establishment number. (1) Any meat establishment or mobile slaughter facility operator licensed under 81-9-201 may apply to the board for state meat and poultry inspection service. The application must include:

(a) the name and address of the establishment or, in the case of a mobile slaughter facility, the name and address of the owner of the mobile slaughter facility and a description of any mobile unit to be used as part of the mobile slaughter facility;

(b) the type of establishment, whether mobile or in a fixed location;

(c) a complete description of the facilities and equipment;

(d) the day of the week and hours of the day when the establishment is in operation; and

(e) other information required by the chief.

(2) (a) The chief, upon receipt of the application, shall inspect the applicant's facilities and equipment, including any mobile unit to be used as part of a mobile slaughter facility. If the establishment or mobile slaughter facility is found to be clean and sanitary and if it meets the requirements of 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236, the board shall authorize the granting of state meat inspection service to the applicant. The board shall then assign an official establishment number to the approved establishment or mobile slaughter facility to be used to mark the meat of the carcasses and parts of carcasses that are offered for sale.

(b) In the case of mobile slaughter facilities, a separate establishment number is required for each mobile unit owned and operated by the applicant. The board shall assign an official establishment number to each approved mobile unit, which must be used to mark the meat of carcasses and parts of carcasses that are offered for sale from that mobile unit.

History: En. Sec. 5, Ch. 577, L. 1987; amd. Sec. 4, Ch. 494, L. 2005.

81-9-228. Inspection stamps. (1) The board shall provide meat inspection stamps to all official establishments, including mobile slaughter facilities, which must contain the words "Montana Inspected and Passed". The inspection stamps must be designed by the board so as to be not in conflict with inspection stamps of the U.S. department of agriculture.

(2) Approved official establishments may use symbols of the inspection stamps on the processed meats and meat food products they offer for sale if they are in compliance with the provisions of 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236.

(3) The meat inspection stamps must at all times be under the jurisdiction of the chief.

History: En. Sec. 6, Ch. 577, L. 1987; amd. Sec. 77, Ch. 83, L. 1989; amd. Sec. 5, Ch. 494, L. 2005.

81-9-229. Assignment of inspectors. (1) The chief shall assign inspectors to each official establishment and may assign one inspector to two or more establishments.

(2) No establishment may slaughter or process cattle, buffalo, horses, sheep, swine, goats, or poultry unless an assigned inspector is present. The hours of the day and days of each week, including holidays or weekends, when the establishment is slaughtering or processing meat must be satisfactorily arranged between the chief and each establishment. Establishments shall pay overtime fees to the board when services are rendered in excess of 8 hours a day or on holidays or weekends.

History: En. Sec. 7, Ch. 577, L. 1987; amd. Sec. 13, Ch. 416, L. 2009.

81-9-230. Antemortem and postmortem inspection required. (1) Official establishments must have an antemortem inspection. The inspector assigned to each establishment shall examine each animal immediately prior to slaughter to eliminate all unfit animals and segregate for more thorough examination all animals suspected of being affected with a condition that might influence their disposition on postmortem inspection. The unfit animals may not enter the slaughtering facilities of the plant. The suspected animals that are permitted to be slaughtered after inspection must be handled separately from the regular kill and given a special postmortem examination.

(2) Official establishments must have a postmortem inspection. The postmortem inspection must be made at the time the animals are slaughtered. The inspectors shall examine the cervical lymph glands, the skeletal lymph glands, the viscera and organs, with their lymph glands, and all exposed surfaces of the carcasses of all cattle, buffalo, horses, sheep, swine, and goats. The examination must be conducted in the slaughtering facilities of the establishment during the slaughtering operations.

(3) The chief or any of the chief's inspectors may have a laboratory designated by the board make pathogenic examination of animals or animal parts for completion of antemortem or postmortem inspection.

History: En. Sec. 8, Ch. 577, L. 1987; amd. Sec. 2692, Ch. 56, L. 2009; amd. Sec. 14, Ch. 416, L. 2009.

81-9-231. Condemnation and appeal. The inspector at an official establishment shall condemn all diseased or otherwise unfit carcasses and parts of carcasses, including the viscera. The condemned parts must be removed from the slaughtering facilities of the plant in equipment designated for that purpose and must be destroyed for food purposes under the supervision of the inspector. If an establishment wishes to appeal a decision of an inspector as to carcasses or parts of carcasses that have been condemned, the establishment may appeal the decision to the chief or any veterinarian the chief may designate. If the establishment is not satisfied and wishes to make a further appeal, it may submit an appeal to the board, whose decision is final unless the person aggrieved, within 10 days after the date of the decision, appeals to the district court of the district in which the licensed premises are located.

History: En. Sec. 9, Ch. 577, L. 1987.

81-9-232. Regulation of equine carcasses or products. (1) Equines and their carcasses, parts of carcasses, and meat food products must be slaughtered and prepared in establishments separate from establishments where cattle, buffalo, sheep, swine, or goats are slaughtered or their carcasses, parts of carcasses, or meat food products are prepared.

(2) The board may by rule otherwise limit the entry of equine carcasses, parts of carcasses, meat food products, and other materials into any establishment where inspection under 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 is maintained under conditions it may prescribe to ensure that allowing the entry of the articles into inspected establishments will be consistent with the purposes of 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236.

History: En. Sec. 10, Ch. 577, L. 1987; amd. Sec. 74, Ch. 7, L. 2001; amd. Sec. 1, Ch. 48, L. 2013.

Cross-References

Municipal regulation of foodstuffs, 7-21-4202.

81-9-233. Cooperation with state and federal authorities. (1) In carrying out the provisions of 81-9-216 through 81-9-220, 81-9-226 through 81-9-234, and 81-9-236, the chief shall consult with the department of environmental quality and any appropriate state laboratory in matters relating to the potability of water, to sewage systems, and to other sanitary conditions of slaughtering and meat processing establishments that might endanger public health.

(2) The board is designated as the agency responsible for cooperating with the U.S. secretary of agriculture in receiving advisory assistance in developing the state program, technical and laboratory assistance and training, and financial assistance for administration of the program.

History: En. Sec. 12, Ch. 577, L. 1987; amd. Sec. 350, Ch. 418, L. 1995; amd. Sec. 550, Ch. 546, L. 1995; amd. Sec. 1, Ch. 86, L. 2019.

81-9-234. Violations — penalties. (1) Except as provided in 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236, no person may:

(a) slaughter livestock or poultry or prepare livestock products or poultry products for human consumption;

(b) sell or transport adulterated, misbranded, condemned, or uninspected meats, livestock products, or poultry products;

(c) falsely represent that an article has been inspected and passed or is exempted under 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 or knowingly make a false statement in any certificate provided for by rules prescribed by the board;

(d) sell or transport slaughtered poultry from which the blood, feathers, feet, head, or viscera have not been removed;

(e) fail to keep any records required by 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236;

(f) forge an official stamp, mark, or certificate;

(g) use, alter, deface, detach, or destroy an official stamp, mark, or certificate without authorization;

(h) fail to use or fail to detach, deface, or destroy an official stamp, mark, or certificate contrary to rules prescribed by the board;

(i) knowingly possess a counterfeit certificate, stamp, or label or the carcass or parts of the carcass of an animal bearing a counterfeit or improperly altered official mark;

(j) sell or transport an equine carcass or parts thereof unless they are conspicuously marked or otherwise identified to show the kind of animal from which they were derived;

(k) buy, sell, or transport livestock products or poultry products not intended for human food unless they are naturally inedible by humans or are denatured or identified as required by rules prescribed by the board;

(l) engage in the business of buying, selling, or transporting dead, dying, disabled, or diseased animals or parts of the carcasses of animals that died otherwise than by slaughter, or buy, sell, or transport dead, dying, disabled, or diseased livestock or poultry or the products of such livestock or poultry that died otherwise than by slaughter unless in accordance with rules adopted under 81-9-302 to assure that such livestock or poultry or the unwholesome parts or products thereof will be prevented from being used for human food purposes.

(2) A person who violates 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 or rules adopted under 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 for which no other criminal penalty is provided is guilty of a misdemeanor and upon conviction is punishable by imprisonment for not more than 1 year or by a fine of not more than $1,000, or both. If the violation involves intent to defraud or any distribution or attempted distribution of an article that is adulterated, such person is guilty of a felony and upon conviction is punishable by imprisonment for not more than 3 years or by a fine of not more than $10,000, or both.

History: **En. Sec. 13, Ch. 577, L. 1987.**

81-9-235. Repealed. Sec. 2, Ch. 86, L. 2019.

History: **En. Sec. 14, Ch. 577, L. 1987; amd. Sec. 2693, Ch. 56, L. 2009.**

81-9-236. Injunction. In addition to remedies provided in 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236, the board is authorized to apply to the district court for and the court shall have jurisdiction, upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating a provision of 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236, whether or not there exists an adequate remedy at law.

History: **En. Sec. 15, Ch. 577, L. 1987.**

Cross-References

Injunctions, Title 27, ch. 19.

81-9-237 through 81-9-239 reserved.

81-9-240. Equine slaughter or processing facilities — no injunction to stop — damages allowed for delay. (1) A court of this state may not issue an injunction stopping or delaying the construction of an equine slaughter or processing facility licensed pursuant to 81-9-201 based on a challenge or appeal of a permit, license, certificate, or other approval issued in conjunction with a proposed equine slaughter or processing facility based on the provisions of:

(a) Title 75, chapter 1, parts 1 through 3;
(b) Title 75, chapter 2, parts 1 through 4;
(c) Title 75, chapter 5, part 4;
(d) Title 75, chapter 10, part 1 and parts 4 through 13; or
(e) this part.

(2) If a person files an action against the operation of an equine slaughter or processing facility and does not prevail, the person is liable for all financial losses the facility suffers if the court issues an injunction that halts operations while the action is pending.

History: En. Sec. 1, Ch. 416, L. 2009; amd. Sec. 28, Ch. 53, L. 2025.

Compiler's Comments

2025 Amendment: See 2025 Session Law for amendment made by sec. 28, Ch. 53, L. 2025. Amendment effective October 1, 2025.

81-9-241. Judicial review of equine slaughter or processing facilities — surety bond — attorney fees — venue. (1) (a) If an action is filed in district court to challenge the issuance of a license, permit, certificate, or other approval for an equine slaughter or processing facility pursuant to Title 75 or this chapter, the court shall require a surety bond of the person filing the action. The bond must be set at an amount representing 20% of the estimated cost of building the facility or the operational costs of an existing facility.

(b) The bonding requirements of this subsection (1) do not apply to an indigent person.

(2) If the bond required under subsection (1) is not paid within 30 days of the filing of the action, the action must be dismissed.

(3) An action to challenge a decision to issue a license, permit, certificate, or other approval must be brought in the county or district court jurisdiction in which the facility will be built. If a facility would be located in more than one county, the action may be brought in any of the counties or district court jurisdictions in which the facility would be built.

(4) If the court determines that a judicial action challenging a license, permit, certificate, or other approval for an equine slaughter or processing plant was without merit or was for an improper purpose designed to harass, cause delay, or improperly interfere with the ongoing operation of a facility, the court may award attorney fees and costs incurred in defending the action.

(5) This section does not prevent a defendant in an action brought pursuant to this section from filing an action or counterclaim for any claim for relief available by law and does not limit the recovery that may be obtained in a claim for relief.

History: En. Sec. 2, Ch. 416, L. 2009.

Part 3
Rendering or Disposal Plants

81-9-301. Licensing of rendering or disposal plants. (1) It is unlawful to operate in this state a rendering or disposal plant or establishment that is intended to be operated for the disposal of bodies or parts of bodies of animals or fowl in any manner, except for human consumption, without first securing a license from the department of livestock.

(2) The license expires on December 31 of the year in which it is issued. The department shall establish a fee to be charged for licenses issued under 81-9-301 through 81-9-306.

(3) All license fees collected shall be paid into the state special revenue fund for the use of the department.

History: En. Sec. 1, Ch. 148, L. 1949; amd. Sec. 159, Ch. 310, L. 1974; R.C.M. 1947, 46-2401; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 21, Ch. 444, L. 1983.

Cross-References

State treasury general fund structure, 17-2-102.

81-9-302. Power of department to adopt and enforce rules. The department may adopt and enforce rules or orders necessary for the supervision, control, and inspection of rendering or disposal plants or establishments, their standards and methods of operation and their sanitary conditions, and the supervision, control, and inspection of equipment of the plant, where the rendering or disposal plants or establishments are intended to be operated for the disposal of bodies or parts of bodies of dead animals or fowl in any manner, except for human consumption. Vehicles and equipment used for the transportation of these bodies or parts of

bodies are subject to the rules or orders adopted by the department which are applicable to the vehicles or equipment. Sections 81-9-301 through 81-9-306 do not apply to the slaughtering and handling of animals or fowl for human consumption.

History: En. Sec. 2, Ch. 148, L. 1949; amd. Sec. 160, Ch. 310, L. 1974; R.C.M. 1947, 46-2402.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

81-9-303. Power of department to restrain operation of rendering plant. (1) The department may restrain the operation of a rendering or disposal plant or establishment engaged in the collection or handling of the bodies or parts of bodies of dead animals or fowl, where the operation is carried on in violation of the laws of this state or the rules or orders of the department, after a hearing held on 5 days' written notice of the hearing to the licensee. The restraining order may be issued without notice of hearing where in the discretion of the department the violation constitutes a menace to public health requiring immediate and summary abatement.

(2) The licensee may appeal to the district court on giving written notice of appeal to the restraining authority within 10 days after service of the restraining order, whether the order is made on hearing or summarily. The written notice of appeal does not stay execution of the restraining order when the restraining order is issued without hearing to restrain a menace to public health requiring immediate and summary abatement.

(3) Where the restraining order is issued after a hearing, the hearing before the district court is on the record, together with any additional evidence offered. Where the order is issued without hearing, the hearing before the district court is on evidence offered at the hearing.

(4) Where the appeal is from an order issued after hearing, the appellant shall pay the cost of the transcript, which must be filed not more than 30 days from the date of filing the notice of appeal. However, the court may, in its discretion, extend the time for filing the transcript.

History: En. Sec. 3, Ch. 148, L. 1949; amd. Sec. 161, Ch. 310, L. 1974; R.C.M. 1947, 46-2403.

Cross-References

Restraining order, Title 27, ch. 19, part 3.

81-9-304. Power of department to revoke license of rendering plant. A license to operate a rendering or disposal plant may be revoked at any time by the department when it determines that a person to whom the license is issued has failed to comply with any statute of this state or rules or orders of the department and on hearing before the department, after 10 days' written notice. Service and filing of a notice of appeal to a district court stays execution of the order.

History: En. Sec. 4, Ch. 148, L. 1949; amd. Sec. 162, Ch. 310, L. 1974; R.C.M. 1947, 46-2404.

81-9-305. Power to administer oaths, subpoena witnesses, and receive evidence. Hearings held under 81-9-301 through 81-9-306 for either revocation of licenses or to restrain operation shall be held by the department, and the department or its agent may administer oaths, subpoena witnesses, and receive evidence in order to carry out 81-9-301 through 81-9-306.

History: En. Sec. 5, Ch. 148, L. 1949; amd. Sec. 163, Ch. 310, L. 1974; R.C.M. 1947, 46-2405.

Cross-References

Contested cases, Title 2, ch. 4, part 6.

81-9-306. Penalty for violation. Operation of a rendering or disposal plant or establishment without a license from the department or operation of a rendering or disposal plant or establishment in violation of a restraining order or after revocation of a license constitutes a misdemeanor, punishable by a fine of not less than $50 or more than $250 for each day of illegal operation.

History: En. Sec. 6, Ch. 148, L. 1949; amd. Sec. 164, Ch. 310, L. 1974; R.C.M. 1947, 46-2406.

81-9-307 through 81-9-310 reserved.

81-9-311. Dead or fallen animal rendering plants — definitions. When used in 81-9-311 through 81-9-317, the following definitions apply:

(1) "Dead or fallen animal" means the carcass or dead body of a cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal, or filly, the continued existence of which would create a public nuisance and constitute a hazard to the public health, which is not killed for human

consumption and is to be salvaged for the purpose of obtaining the hide and grease or fat from the animal.

(2) "Licensed rendering plant" and "licensed renderer" mean a person, partnership, association, or corporation which is engaged in the disposal of dead or fallen animals and which is licensed by the department.

History: En. Sec. 1, Ch. 87, L. 1949; amd. Sec. 165, Ch. 310, L. 1974; R.C.M. 1947, 46-2407.

Cross-References

Public nuisances, 45-8-111.

81-9-312. Identification tags. Licensed rendering plants shall provide themselves with serially-numbered metal identification tags of a size and design prescribed by the department and in a number series assigned by the department.

History: En. Sec. 2, Ch. 87, L. 1949; amd. Sec. 166, Ch. 310, L. 1974; R.C.M. 1947, 46-2408.

81-9-313. Dead or fallen animal records. (1) When a licensed renderer or the renderer's agent receives a dead or fallen animal, the renderer or agent shall present a dead or fallen animal record to the person, corporation, or association that has requested the renderer or agent to remove the dead or fallen animal. The record must be on forms prescribed by the department and contain information the department may, by rule, require.

(2) The report must be executed in quadruplicate. The original copy must accompany the carcass and hide until the hide is officially inspected for marks and brands. The duplicate must be retained by the licensed renderer for the time that the department in its discretion requires. The triplicate must be filed within 7 days after its execution and without cost in the office of the county clerk and recorder of the county in which the animal is received by the licensed renderer or the renderer's agent. The quadruplicate must be retained by the person, corporation, or association that requested removal of the dead or fallen animal.

History: En. Sec. 3, Ch. 87, L. 1949; amd. Sec. 167, Ch. 310, L. 1974; R.C.M. 1947, 46-2409; amd. Sec. 2694, Ch. 56, L. 2009.

81-9-314. Animals to be tagged. At the time of the execution of the dead or fallen animal record provided for in 81-9-313, the licensed renderer or the renderer's agent who receives a dead or fallen animal shall tag the animal with one of the serially numbered identification tags provided in 81-9-312 and shall at the same time record the number of the tag in the proper space provided on the dead or fallen animal record.

History: En. Sec. 4, Ch. 87, L. 1949; R.C.M. 1947, 46-2410; amd. Sec. 2695, Ch. 56, L. 2009.

81-9-315. Production of dead or fallen animal record on demand — animal not to be removed during transportation — investigation. (1) On demand of a livestock inspector, sheriff, undersheriff, deputy sheriff, or other peace officer, a licensed renderer or the renderer's agent who has received a dead or fallen animal shall produce for inspection an executed dead or fallen animal record identifying each dead or fallen animal that the renderer or agent is transporting when the demand is made. Failure to produce the executed dead or fallen animal record on demand constitutes a misdemeanor punishable as provided in 81-9-317.

(2) Under no circumstances may a licensed renderer or the renderer's agent endanger the public health by removing or being required to remove any dead or fallen animals from the vehicle in which they are being transported until the vehicle arrives at a licensed rendering plant where the dead or fallen animal must be handled and disposed of in conformity with the rules of the department.

(3) If a livestock inspector, sheriff, undersheriff, deputy sheriff, or other peace officer has probable cause to believe the dead or fallen animals being transported by a licensed renderer or the renderer's agent were obtained by a commission of a felony, the officer may take the licensed renderer or the renderer's agent, as well as the vehicle, into custody and proceed with the licensed renderer or the renderer's agent to the rendering plant of the licensed renderer, where inspection of marks and brands and immediate investigation must be made.

History: En. Sec. 5, Ch. 87, L. 1949; amd. Sec. 168, Ch. 310, L. 1974; R.C.M. 1947, 46-2411; amd. Sec. 2696, Ch. 56, L. 2009.

Cross-References

Penalty for felony, 46-18-213.

81-9-316. Disposal of hides — inspection — filing of record. When a licensed renderer or the renderer's agent disposes of the hides from dead or fallen animals, the hides must be handled and inspected for marks and brands in conformity with Title 81, chapter 9, part 4. The sheriff, deputy sheriff, person designated by the board of county commissioners, or agent of the department who makes the inspection for marks and brands in conformity with Title 81, chapter 9, part 4, shall complete the original dead or fallen animal record that accompanies the hide by inserting the person's inspector's tag number. The person shall file the completed original dead or fallen animal record without cost in the office of the county clerk and recorder, together with the duplicate certificate of inspection required to be filed under Title 81, chapter 9, part 4.

History: En. Sec. 6, Ch. 87, L. 1949; amd. Sec. 169, Ch. 310, L. 1974; amd. Sec. 55, Ch. 12, L. 1977; R.C.M. 1947, 46-2412; amd. Sec. 2697, Ch. 56, L. 2009.

81-9-317. Penalty. Any person who violates any of the provisions of 81-9-311 through 81-9-317 or who willfully falsifies any of the records required by 81-9-311 through 81-9-317 to be kept shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $50 or more than $250 or by imprisonment in the county jail for a period of not less than 30 days or more than 90 days or by both such fine and imprisonment.

History: En. Sec. 7, Ch. 87, L. 1949; R.C.M. 1947, 46-2413.

Part 4
Hide Dealers

81-9-401. Definitions. (1) "Animal hide" means the hide of a bovine, equine, mule, ass, sheep, goat, or swine of any age, sex, or breed.

(2) "Hide certificate" means a certificate showing a transfer of ownership of animal hides.

(3) "Hide dealer" or "buyer" means, for the purpose of this part, every person, firm, corporation, or association engaged in the business of buying or selling animal hides. However, licensed slaughterhouses shall not be deemed hide dealers or buyers.

(4) "Inspector" means a state stock inspector or deputy state stock inspector, as defined in 81-3-201, appointed by the department of livestock.

(5) "Seller" means a person selling or delivering animal hides for or without a pecuniary consideration.

History: (1), (2), (4), (5)En. Sec. 1, Ch. 44, L. 1961; amd. Sec. 142, Ch. 310, L. 1974; Sec. 46-1101.1, R.C.M. 1947; (3)En. Sec. 1, Ch. 151, L. 1929; re-en. Sec. 3350.7, R.C.M. 1935; amd. Sec. 1, Ch. 177, L. 1939; amd. Sec. 4, Ch. 44, L. 1961; Sec. 46-1106, R.C.M. 1947; R.C.M. 1947, 46-1101.1, 46-1106; amd. Sec. 1, Ch. 236, L. 1979.

81-9-402. Hide certificate — identification. (1) A seller of an animal hide shall obtain a hide certificate from the person receiving the hide. The department shall prescribe the form of the certificate, which must include the marks and brands on each hide. The party receiving the hide shall designate where it will be kept for 30 days following delivery. The certificate must be signed by the seller or the seller's agent and the person receiving the hide.

(2) The original certificate must be sent by the party receiving the hide to the department within 5 days after purchase. One copy must be retained by the seller, and one must be retained by the hide buyer. On reasonable notice, an inspector or other agent of the department or a peace officer may inspect the hide certificate copy of the seller or buyer.

(3) The department shall prescribe an identification tag to be affixed to each hide by the person receiving the hide when it is delivered. Hide certificates, tags, and glue must be furnished by the department at cost to any person requiring the certificates, tags, and glue. Only those certificates, tags, and glue distributed by the department may lawfully be used under this part.

History: En. Sec. 2, Ch. 44, L. 1961; amd. Sec. 143, Ch. 310, L. 1974; amd. Sec. 45, Ch. 12, L. 1977; R.C.M. 1947, 46-1101.2; amd. Sec. 2, Ch. 236, L. 1979; amd. Sec. 2698, Ch. 56, L. 2009.

81-9-403. Seizure and sale of hides when ownership cannot be determined — disposition of proceeds. (1) A state stock inspector or other officer who has authority to make an inspection of a slaughtered beef, veal, or hide of a beef or veal may seize and hold the hide when on inspection the officer finds that the brand is so altered, obliterated, or defaced that the original brand cannot be determined by a reasonable inspection or when the inspector or officer finds that ownership cannot be established by the brand or by other satisfactory proof.

(2) If, within 15 days after the seizure of the hide, proof of ownership cannot be established either by brand, bill of sale, or otherwise, the inspector or officer may sell the hide at the best available price and remit the proceeds, less the cost of processing, storing, and selling, to the department together with a full report of the investigation. The report must contain a statement of the reason for the seizure and sale together with any tendered proof of ownership of any party. The proceeds must be deposited by the department with the state treasurer and credited to the stock estray fund, where it is subject to claim by a party showing proper proof of ownership in the same manner as provided in 81-4-605.

History: En. Sec. 1, Ch. 113, L. 1961; amd. Sec. 145, Ch. 310, L. 1974; R.C.M. 1947, 46-1114; amd. Sec. 2699, Ch. 56, L. 2009.

81-9-404 through 81-9-410 reserved.

81-9-411. Hide dealer or buyer's license fee — disposition of proceeds. Before engaging in business in this state, a hide dealer or buyer shall obtain a license from the department. The department shall establish an annual license fee to be charged for each established place of business at which the hide dealer or buyer purchases or deals in hides. The license continues in force for that calendar year. The moneys collected from the licenses shall be placed in the state special revenue fund for the department. The license must be renewed January 1 of each year.

History: En. Sec. 2, Ch. 151, L. 1929; re-en. Sec. 3350.8, R.C.M. 1935; amd. Sec. 2, Ch. 177, L. 1939; amd. Sec. 5, Ch. 44, L. 1961; amd. Sec. 4, Ch. 248, L. 1965; amd. Sec. 144, Ch. 310, L. 1974; amd. Sec. 48, Ch. 12, L. 1977; R.C.M. 1947, 46-1107; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 22, Ch. 444, L. 1983.

81-9-412. License revocation. Upon receipt of a certified copy of the judgment of conviction of any hide dealer or buyer for any violation of this part, the department may revoke the license of such person for 1 year commencing on the date of the licensee's conviction.

History: En. Sec. 6, Ch. 44, L. 1961; amd. Sec. 49, Ch. 12, L. 1977; R.C.M. 1947, 46-1107.1(2).

81-9-413 through 81-9-420 reserved.

81-9-421. Falsifying hide certificate or failure to affix tag deemed a misdemeanor. (1) Any person, firm, association, or corporation either selling or disposing of or purchasing hides in any manner who shall willfully or intentionally falsify a hide certificate covering such hides shall be deemed guilty of a misdemeanor.

(2) Any person who shall have received any hide as provided in this part without affixing the required identification tag shall be deemed guilty of a misdemeanor.

History: En. Sec. 2, Ch. 61, L. 1923; re-en. Sec. 3350.2, R.C.M. 1935; amd. Sec. 4, Ch. 177, L. 1939; amd. Sec. 3, Ch. 44, L. 1961; R.C.M. 1947, 46-1102.

Cross-References

Penalty for misdemeanor, 46-18-212.

81-9-422. Acting without a license a misdemeanor. Any person acting as a hide dealer or buyer without a license as required by this part is guilty of a misdemeanor.

History: En. Sec. 6, Ch. 44, L. 1961; amd. Sec. 49, Ch. 12, L. 1977; R.C.M. 1947, 46-1107.1(1).

Cross-References

Penalty for misdemeanor, 46-18-212.

81-9-423. Mutilation or concealment of hides a felony. Every person who knowingly mutilates, destroys, or conceals an animal hide for the purpose of removing evidence of ownership of such hide or the animal from which the hide was removed is guilty of a felony and punishable upon conviction thereof by a fine of not less than $500 or more than $5,000 or imprisonment in the state prison for not less than 1 year or more than 10 years, or both.

History: Ap.p. Sec. 1, Ch. 76, L. 1923; re-en. Sec. 3350.4, R.C.M. 1935; amd. Sec. 46, Ch. 12, L. 1977; Sec. 46-1103, R.C.M. 1947; Ap.p. Sec. 3, Ch. 76, L. 1923; re-en. Sec. 3350.6, R.C.M. 1935; Sec. 46-1105, R.C.M. 1947; R.C.M. 1947, 46-1103, 46-1105; amd. Sec. 3, Ch. 236, L. 1979.

81-9-424. Repealed. Sec. 1, Ch. 105, L. 1993.

History: En. Sec. 2, Ch. 76, L. 1923; re-en. Sec. 3350.5, R.C.M. 1935; amd. Sec. 47, Ch. 12, L. 1977; R.C.M. 1947, 46-1104; amd. Sec. 11, Ch. 14, L. 1979.

CHAPTER 10
HORSE OWNER AMNESTY

Part 1 — General Provisions

81-10-101. Short title.
81-10-102. Horse owner amnesty for horse transferred to department — fees.
81-10-103. Horse owner amnesty special revenue account.
81-10-104. Rulemaking.

Part 1
General Provisions

81-10-101. Short title. This part may be referred to as the "Horse Owner Amnesty Act".

History: En. Sec. 1, Ch. 390, L. 2009.

81-10-102. Horse owner amnesty for horse transferred to department — fees. (1) A horse owner who is unable to provide food and water of sufficient quantity and quality to sustain the animal's health may surrender ownership of a horse to the department at:

(a) a licensed livestock market, as defined in 81-8-213; or

(b) a place mutually agreed upon by the horse's owner and the department.

(2) The owner shall pay to the department a fee to be set by rule by the department.

(3) Except as provided in subsections (4) and (5), the department shall sell the horse at a public auction.

(4) A licensed veterinarian may euthanize a horse if the veterinarian determines it to be medically necessary after an inspection of the horse.

(5) The department may allow a surrendered horse to be adopted if a suitable placement can be made and after payment of:

(a) a fee to be set by the department by rule; and

(b) the costs incurred by the department or the public livestock market to maintain the horse.

(6) The fees imposed and the proceeds collected under subsections (2), (3), and (5) must be deposited in the special revenue account provided for in 81-10-103.

(7) A person surrendering a horse to the department under the provisions of this section may not be charged with or prosecuted for cruelty toward animals pursuant to 45-8-211 or 45-8-217.

History: En. Sec. 2, Ch. 390, L. 2009; amd. Sec. 1, Ch. 150, L. 2015.

81-10-103. Horse owner amnesty special revenue account. (1) There is a horse owner amnesty account in the state special revenue fund. Money must be deposited in the account pursuant to 81-10-102(6) and subsection (2) of this section.

(2) Money received by the state in the form of gifts, grants, reimbursements, or allocations from any source to be used for the purposes of defraying the costs of this part must be deposited in the account.

(3) The money in the account is statutorily appropriated, as provided in 17-7-502, to the department of livestock, which shall use the funds to defray the costs of this part.

History: En. Sec. 3, Ch. 390, L. 2009.

81-10-104. Rulemaking. The department may adopt rules to administer this part, including but not limited to rules to:

(1) set fees for horse surrender and adoption;

(2) determine what, if any, proof of financial hardship may be required before an owner may surrender a horse;

(3) create procedures for the adoption of surrendered horses;

(4) reimburse licensed livestock markets for expenses incurred in the upkeep of surrendered horses; and

(5) allow a person who has surrendered a horse to buy the horse back if the person's financial circumstances change and the horse has not been sold or adopted.

History: En. Sec. 4, Ch. 390, L. 2009.

CHAPTERS 11 THROUGH 19
RESERVED

CHAPTER 20
POULTRY AND EGGS

Part 1 — Poultry

81-20-101. Poultry industry — powers and authority of department.
81-20-102. Injunctive remedies.
81-20-103. Violation.
81-20-104. Civil liability.

Part 2 — Eggs

81-20-201. Wholesale egg dealer's and egg grader's licenses — exemptions — fee.
81-20-202. Remittance of fees.
81-20-203. Candling eggs intended for human consumption — candling defined.
81-20-204. Certificate of candling or packing.
81-20-205. Egg — when defined as unfit for human food.
81-20-206. Notice to purchaser of grade of eggs.
81-20-207. Rules to be adopted by department of livestock.
81-20-208. Penalties.
81-20-209. Revocation of license.

Chapter Cross-References

Town or city power to regulate inspection of foodstuffs and sale of meat and poultry, 7-21-4202.
Certain livestock exempt from taxation, 15-6-207.
Livestock per capita tax levy, 15-24-921.
Meat, poultry, and seafood to be sold by weight, 30-12-401.
Cock fights prohibited, 45-8-210.
Montana Food, Drug, and Cosmetic Act, Title 50, ch. 31, parts 1 and 2.
Consideration of administrator's expertise, 81-1-303.
Meat and Poultry Inspection Act, 81-9-216, et seq.

Part 1
Poultry

81-20-101. Poultry industry — powers and authority of department. For the promotion and protection of the poultry industry and to prevent, control, and exterminate infectious, contagious, dangerous, and destructive diseases affecting poultry, the department shall:

(1) supervise the sanitary condition of poultry in this state, under the provisions of the constitution and statutes of this state and the rules adopted by the department. The department may quarantine any lot, yard, land, building, room, premises, enclosure, or other place or section in this state which is or may be used or occupied by poultry and which, in the judgment of the department, is infected or contaminated with an infectious, contagious, communicable, or dangerous disease or disease-carrying medium by which the disease may be communicated. The department may quarantine any poultry in this state when the poultry is affected with or has been exposed to disease or disease-carrying medium. The department may prescribe treatments and enforce sanitary rules which are necessary and proper to circumscribe, extirpate, control, or prevent the diseases.

(2) foster, promote, and protect the poultry industry in this state by the investigation of diseases and other subjects related to ways and means of preventing, controlling, and exterminating diseases of poultry;

(3) adopt and enforce rules for the prevention and extermination of such diseases and perform all other acts and things as may be necessary or proper in the fostering, promotion, or protection of the poultry industry in this state;

(4) adopt and enforce rules and orders necessary or proper to prevent the introduction or spreading of infectious, contagious, communicable, or dangerous diseases affecting poultry in this state, including rules and orders necessary or proper governing inspections and tests of all poultry intended for importation into this state, before it may be imported into this state;

(5) adopt and enforce rules and orders necessary or proper for the inspection, testing, and quarantine of all poultry imported into this state.

History: En. Sec. 1, Ch. 161, L. 1929; re-en. Sec. 3267.1, R.C.M. 1935; amd. Sec. 57, Ch. 310, L. 1974; R.C.M. 1947, 46-209.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

81-20-102. Injunctive remedies. The department may apply for and the court may grant a temporary or permanent injunction restraining any person from violating the provisions of this part or rules adopted under 81-20-101, notwithstanding the existence of other remedies at law. When the application of other remedies has been insufficient to compel action to control, extirpate, or prevent the spread of disease or upon a showing that an animal disease emergency exists and that other remedies probably would be insufficient to compel action to control the emergency, the department may apply for and the court may grant mandatory injunctive relief.

History: En. 46-210.1 by Sec. 1, Ch. 190, L. 1977; R.C.M. 1947, 46-210.1.

Cross-References

Provisions providing for injunctions, Title 27, ch. 19, part 3.

81-20-103. Violation. Any person, persons, firm, or corporation violating any provision of 81-20-101 or any rule or order promulgated by authority of the same or who shall obstruct or interfere with the performance of any duty or the exercise of any power hereby conferred shall be guilty of a misdemeanor.

History: En. Sec. 2, Ch. 161, L. 1929; re-en. Sec. 3267.2, R.C.M. 1935; R.C.M. 1947, 46-210.

Cross-References

Penalty for misdemeanor, 46-18-212.

81-20-104. Civil liability. A person, firm, or corporation which violates this part or rules or orders of the department is liable for damages sustained by a person because of the violation. The damages may be recovered by the person in a civil action in a court of competent jurisdiction.

History: En. Sec. 30, Ch. 262, L. 1921; re-en. Sec. 3289, R.C.M. 1921; re-en. Sec. 3289, R.C.M. 1935; amd. Sec. 81, Ch. 310, L. 1974; amd. Sec. 24, Ch. 12, L. 1977; R.C.M. 1947, 46-239.

Cross-References

District Court jurisdiction, Art. VII, sec. 4, Mont. Const.; Title 3, ch. 5, part 3.

Damages, Title 27, ch. 1, part 2.

Part 2
Eggs

81-20-201. Wholesale egg dealer's and egg grader's licenses — exemptions — fee. (1) A person may not buy, sell, or deal in eggs without first obtaining a wholesale egg dealer's license from the department for each establishment at which business is conducted.

(2) The department shall establish a license fee for dealers buying eggs for resale at wholesale. All licenses must be posted in a conspicuous place in each place of business.

(3) (a) A person buying, selling, or dealing in eggs, a major portion of which are produced by the person's own fowl or in amounts less than an average of 25 cases a month over a 12-month period, is exempt from the requirements of this section.

(b) A person buying eggs for sale at retail is not required to obtain a license from the department.

(4) Wholesale and retail dealers who handle more than an average of 25 cases of eggs a month over a 12-month period and who are supplying eggs to consumers shall sell only eggs candled by or under the supervision of experienced and licensed graders.

(5) The department shall establish a fee for a grader's license. All candlers and graders shall pass an examination required by the department.

(6) A person licensed under this section shall send to the department any information or reports that the department requires.

(7) The licenses provided for in this section expire each year on the anniversary date established by rule by the board of review established in 30-16-302.

History: (1), (2)En. Sec. 1, Ch. 189, L. 1931; re-en. Sec. 2634.1, R.C.M. 1935; amd. Sec. 1, Ch. 151, L. 1939; amd. Sec. 4, Ch. 121, L. 1965; amd. Sec. 1, Ch. 176, L. 1969; amd. Sec. 1, Ch. 310, L. 1974; amd. Sec. 1, Ch. 141, L. 1977; Sec. 3-2301, R.C.M. 1947; (3)En. Sec. 9, Ch. 151, L. 1939; re-en. Sec. 2634.13, R.C.M. 1935; amd. Sec. 1,

Ch. 88, L. 1953; amd. Sec. 7, Ch. 121, L. 1965; amd. Sec. 6, Ch. 310, L. 1974; amd. Sec. 5, Ch. 141, L. 1977; Sec. 3-2313, R.C.M. 1947; R.C.M. 1947, 3-2301, 3-2313; amd. Sec. 23, Ch. 444, L. 1983; amd. Sec. 19, Ch. 366, L. 1997; amd. Sec. 1, Ch. 225, L. 2001.

81-20-202. Remittance of fees. All license fees shall be remitted to the department of livestock which shall deposit them in the state treasury to the credit of the general fund.

History: En. Sec. 2, Ch. 189, L. 1931; re-en. Sec. 2634.2, R.C.M. 1935; amd. Sec. 42, Ch. 147, L. 1963; amd. Sec. 2, Ch. 310, L. 1974; R.C.M. 1947, 3-2302.

Cross-References

State treasury general fund structure, 17-2-102.

81-20-203. Candling eggs intended for human consumption — candling defined. Every person engaged in the business of buying eggs intended for human consumption for resale shall maintain an adequate place for the proper candling and handling of the eggs by an egg grader licensed pursuant to this part or shall purchase only eggs which have already been properly candled and graded under the supervision of an egg grader licensed pursuant to this part. The term "candling" as used in this part means the careful examination, in a partially dark room or place, of the whole egg by means of a strong light.

History: En. Sec. 3, Ch. 189, L. 1931; re-en. Sec. 2634.3, R.C.M. 1935; amd. Sec. 2, Ch. 141, L. 1977; R.C.M. 1947, 3-2303.

81-20-204. Certificate of candling or packing. A person buying eggs for resale at retail, except persons or firms who do not buy and sell more than 25 cases of eggs per month, shall candle all eggs offered to the person that have not been candled under supervision of a licensed egg grader and shall refuse to buy eggs unfit for human food as defined in 81-20-205. Rejects must be returned to the producer, if possible, or, if requested, the candling must be done in the presence of the producer. A certificate must be placed in or on every case of eggs, if candled and graded, in a manner that permits its easy reading and must state the exact grade and size, the date of candling or other date approved by the department, and the name and address of the packer. If the eggs are not candled or graded, the certificate should state "not candled or graded", the name of the dealer, and when packed. The certificate must be printed in letters large enough to be easily read.

History: En. Sec. 5, Ch. 189, L. 1931; re-en. Sec. 2634.5, R.C.M. 1935; amd. Sec. 2, Ch. 151, L. 1939; amd. Sec. 3, Ch. 141, L. 1977; R.C.M. 1947, 3-2305; amd. Sec. 2700, Ch. 56, L. 2009.

81-20-205. Egg — when defined as unfit for human food. (1) Eggs hereinafter defined shall be deemed unfit for human food:

(a) "Addled" or "white rot" means an egg that is putrid or rotten.

(b) "Adherent yolk" means an egg in which the yolk has become fastened to the shell.

(c) "Black rot" means an egg which has deteriorated to such an extent that the whole interior presents a blackened appearance.

(d) "Blood ring" means an egg in which the germ has developed to such an extent that blood is formed.

(e) "Blood spot" is a spot of blood adhering to the yolk of an egg.

(f) "Bloody white" means an egg with a general reddish appearance due to blood mixed through it and which egg may show spots of blood floating in the white.

(g) "Incubated eggs" shall include eggs which have been subjected to incubation, whether natural or artificial, for more than 48 hours, and it shall be unlawful to offer for sale incubated eggs unless branded or stamped with the word "incubated".

(h) "Meat spot" means that the egg has a speck of foreign matter adhering to the yolk or floating in the white.

(i) "Moldy" means an egg which, through improper care, has deteriorated so that mold spores have formed within the egg.

(2) An egg that is smashed or broken so that the contents are leaking is unfit for human food.

(3) Eggs which are otherwise unwholesome or adulterated as such term is defined pursuant to the Federal Food, Drug, and Cosmetic Act and rules promulgated under authority of this part are unfit for human food.

History: En. Sec. 6, Ch. 189, L. 1931; re-en. Sec. 2634.6, R.C.M. 1935; amd. Sec. 3, Ch. 151, L. 1939; amd. Sec. 2, Ch. 176, L. 1969; R.C.M. 1947, 3-2306.

81-20-206. Notice to purchaser of grade of eggs. It is unlawful for a person to sell, offer, or expose for sale at wholesale or retail any eggs for human consumption without notifying the person purchasing or intending to purchase the eggs of the exact grade or quality and size or weight of the eggs, according to the standards prescribed by the department of livestock, by stamping or printing on the container of the eggs the grade or quality and size or weight. If the eggs are offered for sale in bulk, a placard or sign printed in letters 2 inches high must be displayed in a conspicuous place at the point where the eggs are offered or exposed for sale giving the grade, quality, size, weight, and date of grading. This part does not affect the sale of eggs by a producer when the consumer purchases the eggs at the place of production or at a farmer's market as defined in 50-50-102.

History: En. Sec. 8, Ch. 189, L. 1931; re-en. Sec. 2634.8, R.C.M. 1935; amd. Sec. 5, Ch. 151, L. 1939; amd. Sec. 1, Ch. 71, L. 1973; amd. Sec. 3, Ch. 310, L. 1974; R.C.M. 1947, 3-2308; amd. Sec. 2, Ch. 94, L. 2013.

81-20-207. Rules to be adopted by department of livestock. The department of livestock shall enforce this part and adopt rules necessary for the enforcement of this part, including rules for the processing, handling, and marketing of egg products whether shell, liquid, frozen, or dried.

History: En. Sec. 10, Ch. 189, L. 1931; re-en. Sec. 2634.10, R.C.M. 1935; amd. Sec. 4, Ch. 176, L. 1969; amd. Sec. 5, Ch. 310, L. 1974; R.C.M. 1947, 3-2310.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

81-20-208. Penalties. Any person failing to comply with the provisions of this part or any rules adopted pursuant to this part is guilty of a misdemeanor and upon conviction for the first offense shall be punished by a fine of not less than $25 or more than $75. Upon conviction for the second or any subsequent violation of the foregoing provisions of this part the violator shall be fined not less than $50 or more than $200.

History: En. Sec. 11, Ch. 189, L. 1931; re-en. Sec. 2634.11, R.C.M. 1935; amd. Sec. 7, Ch. 151, L. 1939; amd. Sec. 4, Ch. 141, L. 1977; R.C.M. 1947, 3-2311.

81-20-209. Revocation of license. A license issued by the department under this part may be revoked by the department when the holder of the license fails to comply with the laws of this state that apply to the conduct of the business under the license. If a firm, person, or corporation whose license has been revoked by the department continues to buy, sell, or deal in eggs without a license, the firm, person, or corporation is guilty of a misdemeanor and is subject to the penalties provided for in 81-20-208.

History: En. Sec. 10, Ch. 151, L. 1939; Sec. 2634.14, R.C.M. 1935; amd. Sec. 7, Ch. 310, L. 1974; R.C.M. 1947, 3-2314; amd. Sec. 2701, Ch. 56, L. 2009.

CHAPTER 21
DAIRY PRODUCTS

Part 1 — Regulation of Dairies Selling Milk or Cream for Public Consumption

81-21-101. Definitions.
81-21-102. Licensing of milk plants and dairies selling milk or cream for public consumption.
81-21-103. Exceptions of certain producers of dairy products.
81-21-104. Injunctive remedies.
81-21-105. Penalty.
81-21-106. Civil liability.

Chapter Cross-References

Board of Milk Control, 2-15-3105.

City or town council power to regulate inspection of dairy products, 7-21-4202.

Dairy licensing — discrimination prohibited, 49-3-204.

Montana Food, Drug, and Cosmetic Act, Title 50, ch. 31, parts 1 and 2.

Retail and wholesale food manufacturing establishment defined not to include milk facilities or plants, 50-50-102, 50-57-102.

Part 1
Regulation of Dairies Selling Milk or Cream for Public Consumption

81-21-101. Definitions. As used in this part, the following definitions apply:

(1) "Fluid milk plant" means a place where milk or cream is not produced but is purchased or collected and prepared for distribution to the consumer in liquid form.

(2) "Public consumption" means the use of milk or cream by the public for any purpose.

(3) "Small dairy" means a place where no more than 5 lactating cows, 10 lactating goats, or 10 lactating sheep are kept for producing milk.

History: En. Sec. 23, Ch. 262, L. 1921; re-en. Sec. 3282, R.C.M. 1921; amd. Sec. 11, Ch. 35, L. 1923; amd. Sec. 1, Ch. 170, L. 1929; re-en. Sec. 3282, R.C.M. 1935; amd. Sec. 1, Ch. 382, L. 1973; amd. Sec. 76, Ch. 310, L. 1974; amd. Sec. 19, Ch. 12, L. 1977; R.C.M. 1947, 46-232(part); amd. Sec. 1, Ch. 40, L. 1983; amd. Sec. 14, Ch. 320, L. 2021.

81-21-102. Licensing of milk plants and dairies selling milk or cream for public consumption. (1) Except for a small dairy, it is unlawful for the following businesses to operate in this state without first obtaining a license from the department:

(a) a dairy selling milk or cream for public consumption in the form in which it is originally produced;

(b) a condensed, evaporated, or powdered milk plant;

(c) a fluid milk plant.

(2) A license expires on December 31 of the year issued. The department may, following the procedures in the Montana Administrative Procedure Act, deny, suspend, or revoke a license when it determines that a person to whom the license is issued has failed to comply with the rules of the department or has failed to conduct the person's establishment in a sanitary manner. All license fees collected must be deposited into the general fund.

(3) The department may issue a restraining order prohibiting a dairy from selling or giving away milk or cream not produced or handled under the laws of this state or the rules of the department. It is unlawful for a dairy, while restrained, to sell or give away for public consumption milk or cream produced or handled by the dairy, and it is also unlawful for a dairy products manufacturing plant, milk plant, or cream station to purchase or use the cream or milk from a dairy while the dairy is restrained.

(4) The department shall establish license fees for the following facilities:

(a) a condensed, evaporated, or powdered milk factory;

(b) a fluid milk plant; and

(c) a dairy.

(5) A person violating this section is guilty of a misdemeanor.

History: En. Sec. 23, Ch. 262, L. 1921; re-en. Sec. 3282, R.C.M. 1921; amd. Sec. 11, Ch. 35, L. 1923; amd. Sec. 1, Ch. 170, L. 1929; re-en. Sec. 3282, R.C.M. 1935; amd. Sec. 1, Ch. 382, L. 1973; amd. Sec. 76, Ch. 310, L. 1974; amd. Sec. 19, Ch. 12, L. 1977; R.C.M. 1947, 46-232(part); amd. Sec. 24, Ch. 444, L. 1983; amd. Sec. 2702, Ch. 56, L. 2009; amd. Sec. 15, Ch. 320, L. 2021.

Cross-References

Montana Administrative Procedure Act — contested cases, Title 2, ch. 4, part 6.

State treasury general fund structure, 17-2-102.

Penalty for misdemeanor, 46-18-212.

Licenses to producers, producer-distributors, distributors, and jobbers, 81-23-201.

81-21-103. Exceptions of certain producers of dairy products. (1) The owners or operators of small dairies, dairies, creameries, butter factories, cheese factories, or other places of business engaged in the production, storage, or transportation of dairy products are not required to procure a license from the department of public health and human services for the business of production, storage, or transportation of these food products.

(2) This section does not limit:

(a) the supervision or regulation by the department of public health and human services of the sanitary condition of a restaurant, hotel, boardinghouse, or retail market or the products sold or offered for sale at those facilities; or

(b) the duties imposed by law on the department of public health and human services to make sanitary rules for the eradication or control of an epidemic of human disease that may exist in a community.

History: En. Sec. 24, Ch. 262, L. 1921; re-en. Sec. 3283, R.C.M. 1921; re-en. Sec. 3283, R.C.M. 1935; amd. Sec. 77, Ch. 310, L. 1974; amd. Sec. 20, Ch. 12, L. 1977; R.C.M. 1947, 46-233(part); amd. Sec. 351, Ch. 418, L. 1995; amd. Sec. 551, Ch. 546, L. 1995; amd. Sec. 16, Ch. 320, L. 2021.

Cross-References

Quarantine measures, 50-1-204.

Department of Public Health and Human Services authorized to adopt food standards, 50-31-201.

81-21-104. Injunctive remedies. The department may apply for and the court may grant a temporary or permanent injunction restraining any person from violating the provisions of this chapter or rules adopted under 81-2-102, notwithstanding the existence of other remedies at law. When the application of other remedies has been insufficient to compel action to control, extirpate, or prevent the spread of disease or upon a showing that an animal disease emergency exists and that other remedies probably would be insufficient to compel action to control the emergency, the department may apply for and the court may grant mandatory injunctive relief.

History: En. 46-210.1 by Sec. 1, Ch. 190, L. 1977; R.C.M. 1947, 46-210.1.

Cross-References

Injunctions, Title 27, ch. 19.

81-21-105. Penalty. Any person, persons, firm, or corporation violating any provision of this chapter, or the rule or order promulgated by authority of 81-2-102, shall be guilty of a misdemeanor. Violations of this chapter shall be tried without undue delay in any court of competent jurisdiction.

History: En. Sec. 29, Ch. 262, L. 1921; re-en. Sec. 3288, R.C.M. 1921; re-en. Sec. 3288, R.C.M. 1935; amd. Sec. 23, Ch. 12, L. 1977; R.C.M. 1947, 46-238.

Cross-References

Penalty for misdemeanor, 46-18-212.

81-21-106. Civil liability. A person, firm, or corporation which violates this part or rules or orders of the department is liable for damages sustained by a person because of the violation. The damages may be recovered by the person in a civil action in a court of competent jurisdiction.

History: En. Sec. 30, Ch. 262, L. 1921; re-en. Sec. 3289, R.C.M. 1921; re-en. Sec. 3289, R.C.M. 1935; amd. Sec. 81, Ch. 310, L. 1974; amd. Sec. 24, Ch. 12, L. 1977; R.C.M. 1947, 46-239.

Cross-References

District Court jurisdiction, Art. VII, sec. 4, Mont. Const.; Title 3, ch. 5, part 3.

Damages, Title 27, ch. 1, part 2.

CHAPTER 22
MANUFACTURED DAIRY PRODUCTS

Part 1 — Administration

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81-22-103. New or amended rules — mailing — hearing — judicial review.
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81-22-204. License required for milk or cream route.
81-22-205. Examination and licensing of persons engaged in testing.
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81-22-501. Required records and reports — examination.
81-22-502. Monthly report of plant operator — penalty.
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81-22-601. Penalties for violations.
81-22-602. Deceit in grade, measure, or test of milk and cream unlawful.

Chapter Cross-References

Special levies on commodities for commodity inspection, Art. XII, sec. 1, Mont. Const.
Dairy licensing — discrimination prohibited, 49-3-204.
Montana Food, Drug, and Cosmetic Act, Title 50, ch. 31, parts 1 and 2.

Part 1
Administration

81-22-101. Definitions. For the purpose of this chapter, the following definitions are adopted:

(1) "Agent" means a person who is authorized by another person to act for that other person in dealing with a third person.

(2) "Butter" is the clean, nonrancid product made by gathering the fat of fresh ripened milk or cream into a mass that also contains a small portion of the other milk constituents, with or without salt, and must contain not less than 80% of milk fat. No tolerance for deficiency in milk fat is permitted. Butter may also contain added coloring matter.

(3) "Cheese" is the sound, solid, and ripened product made from milk or cream by coagulating the casein with rennet or lactic acid, with or without ripening ferments and seasoning, and must contain in the water-free substance not less than 50% of milk fat and not more than 39% of moisture. Cheese may also contain added coloring matter.

(4) "C.I.P." means the procedure by which sanitary pipelines or pieces of dairy equipment are mechanically cleaned in place by circulation when this procedure meets the 3-A accepted practices for permanently installed sanitary product-pipelines and cleaning systems.

(5) "Code of Federal Regulations" refers especially but is not limited to Title 21, which contains the definitions and standards of identity for products as established by the food and drug administration, United States department of health and human services.

(6) "Cream" means the milk fat that rises to the surface when milk is allowed to stand or that is separated from milk by centrifugal force when sold, used, or intended for use in a manufactured product.

(7) "Creamery" means a place where butter is made for commercial purposes.

(8) "Culture" means the harmless lactic acid fermenting bacteria that are added to milk or cream to make manufactured dairy products like cultured buttermilk, cheese, cottage cheese, yogurt, sour cream, cream cheese, butter, and similar products.

(9) "Dairy" or "dairy farm" means a place where 6 or more lactating cows, 11 or more lactating goats, 11 or more lactating sheep, or 11 or more of any lactating hoofed mammals are kept, a part or all of the milk or cream from which is used for manufacturing purposes.

(10) The term "department", unless otherwise indicated, means the department of livestock provided for in Title 2, chapter 15, part 31.

(11) "Directly acidified" and similar terms mean the process of adding a food grade acid to milk or cream instead of or in addition to the adding of culture.

(12) "Filled dairy products" means milk, cream, skimmed milk, or any combination of these, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, or any food product made or manufactured from them, to which has been added or which has been blended or compounded with fat or oil other than milk fat so that the resulting product is in imitation or semblance of a dairy product, including milk, cream, sour cream, skimmed milk, ice cream, low-fat ice cream, whipped cream, flavored milk or skim milk yogurt, dried or powdered milk, cheese, cream, cream cheese, cottage cheese, creamed cottage cheese, ice cream mix, low-fat ice cream mix, sherbet, condensed milk, evaporated milk, or concentrated milk.

(13) "French ice cream", "French custard ice cream", and similar frozen products, except sherbets and water ices, are varieties of ice cream.

(14) "Grading" means the examination of milk, cream, or products by sight, odor, taste, or laboratory analysis, the results of which determine a grade designating their quality.

(15) "Ice cream" is a frozen product made with pure, sweet milk, cream, skim milk, evaporated or condensed milk, evaporated or condensed skim milk, dry milk, dry skim milk, pure milk fat, wholesome sweet butter, or any combination of these products, with or without sweetening, or clean wholesome eggs or egg products, with or without the use of harmless flavoring and coloring. Ice cream must contain not less than 10% of milk fat, not less than 33% total solids, and may or may not contain pure and harmless edible stabilizer. Ice cream may contain not to exceed 1% gelatin. A frozen milk or milk product may not be manufactured or sold unless it contains at least 10% butterfat, excepting sherbets, ices, and other exceptions under this section. All ice cream must be manufactured from pasteurized ice cream mix.

(16) (a) "Ice cream mix" is a pasteurized, unfrozen product used in the manufacture of ice cream and must comply with the requirements for ice cream.

(b) "Mix" includes the liquid, unfrozen product from which those frozen products listed under subsections (21)(a)(iii) through (21)(a)(xii) are made.

(17) "Intrastate commerce" means commerce within this state under the jurisdiction of the state and includes the operation of a business or service establishment.

(18) "Manufactured dairy product" means an item enumerated in subsection (21) or any other dairy product made by incorporating milk or cream or converting milk or cream into a different state of appearance or quality. For purposes of reporting production and licensing, manufactured dairy product includes but is not limited to:

(a) ice cream or its mix;

(b) French ice cream, custard ice cream, French custard ice cream, their low-fat counterparts, or their mixes;

(c) sherbets of all kinds or their mixes;

(d) animal or vegetable fat frozen desserts or their mixes;

(e) frozen confections or their mixes when made in a manufactured dairy products plant;

(f) water ices or their mixes;

(g) frozen dessert sandwiches, bars, cones, and similar novelties;

(h) frozen dessert made of nondairy origins and other products made in the semblance or imitation of dairy products or their mixes when made in a manufactured dairy products plant;

(i) ice milk or its mix;

(j) cheese of all kinds, including cottage cheese, cheese curd, cheese dressing, and cream cheese, either cultured or directly acidified;

(k) sour cream when cultured or directly acidified;

(l) eggnog, low-fat eggnog, eggnog-flavored milk, and similar flavored products;

(m) buttermilk, cultured or from churned butter or directly acidified;
(n) butter;
(o) yogurt, low-fat yogurt, or flavored yogurt, either cultured or directly acidified or frozen.

(19) "Manufactured dairy products plant" or "factory" means a place where milk or cream is collected and converted into a product or into a different state of appearance or quality or that manufactures those products listed in subsection (21). If only products of semblance or imitation of dairy products are made, the plant is not considered a manufactured dairy products plant.

(20) "Milk" means the lacteal secretion, practically free from colostrum, obtained by the milking of one or more healthy hoofed mammals located in modified accredited areas and modified certified areas or from hoofed mammals in herds fully accredited as tuberculosis-free by the United States department of agriculture or in the process of being accredited, when the milk or cream is sold for use in, intended for use in, or used in a manufactured dairy product.

(21) (a) "Milk" and "cream" mean milk and cream sold, used, or intended for manufacturing purposes or for conversion into products of a form other than the form in which originally produced or products commonly known as but not limited to:
(i) butter;
(ii) cheese, including cottage cheese, low-fat cottage cheese, cheese curd, and cream cheese, which are either cultured or directly acidified, and cheese dressings;
(iii) ice cream or its mix;
(iv) frozen dessert or its mix;
(v) sherbets of all kinds or their mixes;
(vi) frozen ice cream bars, sandwiches, cones, and similar novelties;
(vii) frozen desserts or products made in the semblance or imitation of frozen dessert;
(viii) frozen confections or their mixes;
(ix) water ices or their mixes;
(x) ice milk or its mix;
(xi) French ice cream, French custard, or their mixes;
(xii) frozen custard or its mix and frozen yogurt;
(xiii) yogurt, flavored yogurt, and low-fat yogurt;
(xiv) sour cream, either cultured or directly acidified;
(xv) cream cheese, either cultured or directly acidified;
(xvi) buttermilk, either cultured, from churned butter, or directly acidified;
(xvii) eggnog, low-fat eggnog, eggnog-flavored milk, whipped cream, flavored toppings, and similar flavored products;
(xviii)dry or powdered milk; and
(xix) condensed milk products.

(b) The items specified in subsection (21)(a) must conform to the standards of identity set forth in the Code of Federal Regulations. If standards of identity are not set forth in the code, then the standards adopted by the department prevail. The labeling of manufactured dairy products must be in accordance with the Montana Food, Drug, and Cosmetic Act.

(22) "Milk or cream station" means a place other than a creamery where deliveries of milk or cream are weighed, graded, sampled, tested, or collected for purchase.

(23) "Mislabeled", "unwholesome", "food additives", "optional ingredients", "impure", "misbranded", "contaminated", "adulterated", "perishable", "hazardous", "unfit", "spoiled", "damaged", and similar terms, when applied to a manufactured dairy product or product made in semblance or in imitation of a manufactured dairy product, are as defined in Title 50, chapter 31.

(24) "Official test" means test procedures outlined in the sources referred to under 81-22-301 concerning samples, methods, and rules of evidence.

(25) "Pasteurization", "pasteurizing", and similar terms mean the process of heating every particle of milk or milk product to at least 145 degrees F and holding it continuously at or above this temperature for at least 30 minutes or to at least 161 degrees F and holding it continuously at or above this temperature for at least 15 seconds in equipment that is properly operated and approved by the department. Milk products that have a higher fat content than milk or contain added sweeteners must be heated to at least 155 degrees F and held continuously at or above this temperature for at least 30 minutes, or to at least 175 degrees F and held continuously

at or above this temperature for at least 25 seconds. This definition does not bar any other pasteurization process that has been recognized by the United States public health service to be equally effective and that is approved by the department.

(26) "Person" means an individual, firm, partnership, corporation, cooperative, or other business unit or trade device.

(27) "Producer" means the person who exercises control over the production of milk or cream delivered to a milk or cream receiving station or manufactured dairy products plant or who receives payment for milk or cream used in manufacturing.

(28) "Safe temperature" means 45 degrees F or less unless the product is frozen, in which case the temperature must be at or below 0 degrees F.

(29) "Small dairy" means a place where no more than 5 lactating cows, 10 lactating goats, 10 lactating sheep, or 10 other lactating hoofed mammals are kept for producing milk.

(30) "Testing", "test", "tested", and similar words mean the examination of milk, cream, or manufactured dairy products by sight, odor, taste, or biological or chemical laboratory analysis to determine their quality, wholesomeness, or composition.

(31) "Water ice" means a frozen product containing but not limited to the following ingredients: water, sugar, flavoring, coloring, stabilizers, and other ingredients allowed by the Code of Federal Regulations as optional ingredients.

History: Ap.p. Sec. 10, Ch. 413, L. 1971; amd. Sec. 17, Ch. 310, L. 1974; amd. Sec. 4, Ch. 12, L. 1977; Sec. 3-2497, R.C.M. 1947; Ap.p. Sec. 4, Ch. 93, L. 1929; amd. Sec. 1, Ch. 39, L. 1931; re-en. Sec. 2620.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1937; amd. Sec. 8, Ch. 310, L. 1974; amd. Sec. 1, Ch. 12, L. 1977; Sec. 3-2404, R.C.M. 1947; R.C.M. 1947, 3-2404(1) thru (17), 3-2497; amd. Sec. 12, Ch. 14, L. 1979; amd. Sec. 79, Ch. 10, L. 1993; amd. Sec. 291, Ch. 42, L. 1997; amd. Sec. 1, Ch. 159, L. 2017; amd. Sec. 17, Ch. 320, L. 2021.

81-22-102. General authority of department. (1) The department may regulate and establish sanitation standards for persons operating dairies producing milk for manufacturing purposes. The department may regulate and establish sanitation and quality standards for a person engaged in the processing of manufactured dairy products or of products made or sold in the semblance or imitation of dairy products in this state when those products made in semblance or imitation of dairy products are made in a manufactured dairy products plant.

(2) The department may adopt minimum standards for the production, transportation, grading, testing, use, processing, packaging, and storage of milk and cream used for manufacturing purposes and of manufactured dairy products.

(3) The department shall adopt rules and establish fees for licenses for selling or producing milk as required by 81-23-202.

(4) The department may not establish fees, rules, or standards under this chapter for small dairies selling milk or cream as homemade food or a homemade food product pursuant to Title 50, chapter 49, part 2.

History: (1)En. Sec. 1, Ch. 413, L. 1971; amd. Sec. 9, Ch. 310, L. 1974; Sec. 3-2488, R.C.M. 1947; (2)En. 2, Ch. 413, L. 1971; amd. Sec. 10, Ch. 310, L. 1974; amd. Sec. 2, Ch. 12, L. 1977; Sec. 3-2489, R.C.M. 1947; R.C.M. 1947, 3-2488, 3-2489; amd. Sec. 25, Ch. 444, L. 1983; amd. Sec. 18, Ch. 320, L. 2021.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

81-22-103. New or amended rules — mailing — hearing — judicial review. (1) Every new or amended rule proposed by the department under this chapter shall be mailed to each person licensed under this chapter who will be affected by the rule, at least 45 days before the date on which the rule becomes effective.

(2) On application in writing filed at least 15 days before the effective date of the proposal by a person licensed under this chapter, the department shall vacate the effective date of the proposed rule and hold a public hearing on and take evidence concerning it. Within 30 days after the conclusion of the hearing, the department shall make written findings and conclusions and a written decision based on the hearing, determining whether the rule shall be adopted. A new or amended rule adopted following the hearing and conclusion may not take effect until 90 days after the date of the decision.

(3) The district court of the first judicial district has jurisdiction to review, modify, or set aside a decision adopting a new or amended rule under this chapter on petition made to it at any time before the effective date of the rule by a person claiming to be adversely affected by the decision.

History: En. Sec. 8, Ch. 413, L. 1971; amd. Sec. 15, Ch. 310, L. 1974; R.C.M. 1947, 3-2495.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

81-22-104. Enforcement of laws and rules — violation as misdemeanor. (1) The department shall supervise and enforce the laws and rules which pertain to the standards of quality and sanitation of manufactured dairy products and of cream, whole milk, skimmed milk, condensed milk, evaporated milk, and food additives used in manufacturing dairy products.

(2) Rules adopted under this chapter have the effect of law, and violation of these rules is a misdemeanor, punishable as provided in 81-22-601 unless a specific penalty has been provided.

History: En. Sec. 6, Ch. 413, L. 1971; amd. Sec. 14, Ch. 310, L. 1974; R.C.M. 1947, 3-2493.

81-22-105. Investigation of complaints and violations — injunction. The department shall provide for periodic inspections and investigations to disclose violations of this chapter or of rules adopted under this chapter. The department shall receive and provide for the investigation of complaints and request the institution and prosecution of civil or criminal actions, or both. This chapter and the rules adopted under it may be enforced by injunction in a court having jurisdiction to grant injunctive relief. An adulterated, impure, contaminated, misbranded, condemned, or mislabeled article or product involved in a violation of this chapter or of the rules adopted under this part is subject to seizure and disposition under an order of the court.

History: En. Sec. 9, Ch. 413, L. 1971; amd. Sec. 16, Ch. 310, L. 1974; amd. Sec. 3, Ch. 12, L. 1977; R.C.M. 1947, 3-2496.

Cross-References

Injunctions, Title 27, ch. 19.

Penalties for violation, 81-22-601.

81-22-106. Names and addresses of producers furnished on request. The operator of any manufactured dairy products plant or grade A milk plant shall, on request of the department, furnish the department with the names and addresses of all producers from whom the plant obtains milk or cream.

History: En. Sec. 21, Ch. 413, L. 1971; amd. Sec. 26, Ch. 310, L. 1974; R.C.M. 1947, 3-24-108.

81-22-107. Use of inspections, tests, samples, etc., as evidence. All copies of inspections, written transcriptions, tests, samples of dairy products, analyses, correspondence, records of payment, trip and field reports, and photographic presentations relating to matters under this chapter may be used as evidence in any court of jurisdiction, at hearings, or as testimony of the facts disclosed.

History: En. Sec. 22, Ch. 413, L. 1971; R.C.M. 1947, 3-24-109.

81-22-108. Antimonopoly statutes applicable. The provisions of Title 30, chapter 14, part 2, relating to monopoly in the purchase or sale of products in general use are hereby expressly made applicable to all persons engaged in the business of buying milk, cream, or butterfat for the purpose of manufacture and those who shall violate any of the provisions of said sections. All milk, cream, butterfat, manufactured dairy products, or products made in the semblance or imitation of manufactured dairy products are hereby declared to be commodities and products in general use within the meaning of the sections aforesaid.

History: En. Sec. 43, Ch. 413, L. 1971; R.C.M. 1947, 3-24-130.

Part 2
Licensing Provisions

81-22-201. License required to operate manufactured dairy products plant. (1) It is unlawful for any person to operate a manufactured dairy products plant, concentrated, condensed, or evaporated milk and/or cream plant, milk and cream buying station, creamery, dairy producing milk for manufacturing purposes, water ice manufacturing plant, cheese plant including cottage cheese, and cream cheese, sour cream, yogurt, or frozen dessert manufacturing plant without first obtaining a license from the department.

(2) Any manufactured dairy products plant or dairy which undergoes a change of ownership must be considered a new plant or dairy for relicensing purposes, provided that changes of ownership may not be construed to include changes of stockholders.

(3) A small dairy selling milk or cream as homemade food or a homemade food product pursuant to Title 50, chapter 49, part 2, is exempt from the licensing requirements of this section.

History: En. Sec. 20, Ch. 413, L. 1971; R.C.M. 1947, 3-24-107; amd. Sec. 19, Ch. 320, L. 2021.

81-22-202. Licensing of persons engaged in production of milk. (1) The department may license persons engaged in the production of milk for manufacturing purposes and license persons who manufacture dairy products or products made in their semblance or imitation when the products are made in a manufactured dairy products plant.

(2) The department may examine and license weighers, graders, samplers, and milk and cream testers in order to establish the qualifications of these persons to perform those operations or tests for which the licenses are issued.

History: En. Sec. 3, Ch. 413, L. 1971; amd. Sec. 11, Ch. 310, L. 1974; R.C.M. 1947, 3-2490.

81-22-203. Renewal, suspension, or revocation of license — grounds — hearing — appeal to district court. (1) The department may revoke, deny renewal of, or suspend a license issued under this part or its rules for cause or failure to comply with this chapter or with the rules, testing procedures, or methods adopted under this chapter or when the department has reason to believe that the licensee's products may be detrimental to or jeopardize the health and welfare of the public.

(2) Before revoking, denying renewal of, or suspending a license, the department shall give written notice of its intention to revoke, deny, or suspend the license and its reasons for the revocation, denial, or suspension. The department shall give the licensee a time limit of 10 days from receipt of the notice during which the licensee may request a hearing to show cause why the license should not be revoked, denied, or suspended. The notice must be sent by certified mail, or personal service may be made on the licensee by a representative of the department. Failure of the licensee to request a hearing within the time allowed by the department is considered as the licensee's desire not to contest the department's reasons for revoking, denying, or suspending the license.

(3) If the licensee requests a hearing, the department shall appoint a time and place for an administrative hearing in the county where the licensee is licensed.

(4) The date established for the hearing may be not less than 10 days or more than 30 days after receipt of the licensee's request for the hearing. A request for a hearing serves as a bar to prosecution until a decision from the department becomes final. The licensee at the hearing may testify or present evidence having a bearing on the revocation, denial, or suspension of the license, and after hearing all the evidence, the department shall make a determination. If a license is revoked, denied, or suspended, it may not be reinstated until examination or inspection by the department shows that the cause for revocation, denial, or suspension has been eliminated or corrected.

(5) It is unlawful for a licensee to carry on the business or operations for which the licensee was licensed, during the term of suspension or revocation, and if the licensee does so, the licensee is subject to the penalties provided in the chapter.

(6) A licensee who is aggrieved by the decision of the department in matters pertaining to revocation, denial, or suspension of a license may appeal, within 30 days after the date of determination by the department, to the district court of the county in which the licensee was licensed, if in the state, or in the case of a business firm of any nature in the state, of the county of its principal place of business.

(7) If a license is revoked a new license must be obtained from the department, but a new license may be issued only when the cause for revocation has been corrected.

History: En. Sec. 19, Ch. 413, L. 1971; amd. Sec. 25, Ch. 310, L. 1974; R.C.M. 1947, 3-24-106; amd. Sec. 2703, Ch. 56, L. 2009.

Cross-References

Contested cases, Title 2, ch. 4, part 6.

Department of Public Health and Human Services — licensing of food manufacturing establishments, Title 50, ch. 50, part 2; Title 50, ch. 57, part 2.

81-22-204. License required for milk or cream route. It is unlawful for a person to engage in hauling milk or cream on an established milk or cream route for a manufactured

dairy products plant, milk plant, or milk or cream station without first procuring a license from the department. The department shall establish a fee for the license.

History: En. Sec. 13, Ch. 413, L. 1971; amd. Sec. 20, Ch. 310, L. 1974; R.C.M. 1947, 3-24-100; amd. Sec. 13, Ch. 14, L. 1979; amd. Sec. 26, Ch. 444, L. 1983.

81-22-205. Examination and licensing of persons engaged in testing. (1) A person may not operate a butterfat, protein, solids, or other component content test where milk or cream is bought and paid for on the basis of these values without first passing an appropriate examination and obtaining the license required by the department. A person desiring to operate these tests shall apply to the department for permission to take the butterfat, protein, solids, or other component content test operator's examination. The examination must be given to the applicant by the department. On passing the examination to the satisfaction of the department, the applicant must be issued a license authorizing the applicant to conduct these tests in this state. The department shall establish a fee to be paid for each license and for each renewal.

(2) Milk and cream tester's licenses may be revoked, suspended, or denied when testing is not conducted under official test procedures or under department rules. If the tester regularly or habitually reports results below the actual values of the butterfat, protein, solids, or other compound component values, the licensee is subject to the penalties provided in this chapter. A person who alters the results of an official test is subject to the penalties provided in this chapter.

History: En. Sec. 15, Ch. 413, L. 1971; amd. Sec. 22, Ch. 310, L. 1974; R.C.M. 1947, 3-24-102; amd. Sec. 27, Ch. 444, L. 1983; amd. Sec. 2704, Ch. 56, L. 2009.

81-22-206. Licensing of graders, weighers, and samplers. It is unlawful for a person to grade, weigh, or sample milk or cream to be used for processing into grade A milk and cream or used in manufactured dairy products without first procuring a license as a grader, weigher, and sampler from the department and passing the examination required by the department.

History: En. Sec. 18, Ch. 413, L. 1971; amd. Sec. 24, Ch. 310, L. 1974; R.C.M. 1947, 3-24-105(2).

81-22-207. License — issuance and penalty. (1) All licenses issued under this part are issued as a matter of privilege, rather than as a matter of right, and only after proper qualifications under the rules of the board.

(2) All licenses issued under this part are valid, unless suspended or revoked for cause, from the date of issue through December 31 of the year in which issued. All licenses must be renewed by January 31 following the date of the license expiration on payment of the required fee.

(3) All licenses issued under this part must be posted in conspicuous view at the place of business.

(4) Licenses issued under this part are not transferable from place to place or person to person.

(5) Penalties of $5 per month or fraction of a month from January 31 of each year may be imposed by the department for a failure to apply for a license under this part. Regulatory action may not be taken against a dairy producer licensed under this part until 2 years following the adoption of rules under this chapter.

History: En. Sec. 14, Ch. 413, L. 1971; amd. Sec. 21, Ch. 310, L. 1974; R.C.M. 1947, 3-24-101; amd. Sec. 2705, Ch. 56, L. 2009.

81-22-208. Licenses and schedule of license fees. (1) Licenses and license fees required under this part must be established by the department for the following facilities and activities:

(a) a manufactured dairy products plant. However, a plant license is not required of a retail food establishment licensed as provided in Title 50, chapter 50, and a license is not required to manufacture nondairy products when only nondairy products are manufactured.

(b) a cream station. However, a license is not required if the cream station is owned and operated by a licensed plant, but the milk and cream, equipment, premises, and means of transporting milk or cream are subject to official inspection.

(c) a dairy producing milk for manufacturing purposes. However, a dairy license is not required if the dairy farm is licensed by the department to produce and sell milk or cream in the form in which it is originally produced as required by 81-21-102.

(d) a grader-weigher-sampler, tester, and hauler. However, a separate grader-weigher-sampler, tester, and hauler license is required whether a person performing these activities owns and operates the plant, is employed by the plant, or is self-employed.

(2) (a) A license is valid on the date issued and expires on December 31 of that year unless suspended or revoked by the department. A license must be renewed by the first January 31 following the expiration date. A license renewal application form may be supplied by the department. The license renewal application form when returned to the department must be accompanied by the correct license fee.

(b) A license must be posted in conspicuous view at the place of business.

(c) A license is not transferable from place to place or from person to person.

(3) A penalty fee in an amount established by rule by the department may be imposed on a person who fails to apply for renewal of a license if under this part that person is required to be licensed.

(4) All license fees collected under this section must be deposited in the general fund.

History: En. Sec. 1, Ch. 451, L. 1973; R.C.M. 1947, 3-24-112.1; amd. Sec. 28, Ch. 444, L. 1983; amd. Sec. 352, Ch. 418, L. 1995; amd. Sec. 552, Ch. 546, L. 1995; amd. Sec. 30, Ch. 239, L. 2015.

81-22-209. License requirements applicable. The licenses required under this part apply only to those licenses issued by the department. This part does not repeal or abrogate the authority of or the issuance of licenses by the department of public health and human services.

History: En. Sec. 42, Ch. 413, L. 1971; amd. Sec. 36, Ch. 310, L. 1974; R.C.M. 1947, 3-24-129; amd. Sec. 353, Ch. 418, L. 1995; amd. Sec. 553, Ch. 546, L. 1995.

Cross-References

Department of Public Health and Human Services — licensing of food manufacturing establishments, Title 50, ch. 50, part 2; Title 50, ch. 57, part 2.

Part 3
Inspection

81-22-301. Tests and analyses — admissibility as evidence. (1) The department may require a chemist, biologist, microbiologist, serologist, or other qualified employee of the department of public health or other laboratory approved by the department to test or analyze samples of milk, cream, manufactured dairy products, or products made in the semblance or imitation of these products.

(2) (a) The following tests or analyses may be used:

(i) an appropriate test method listed in Standard Methods for the Examination of Dairy Products, current edition—American Public Health Association, Inc., or in Standard Methods for the Examination of Water and Waste Water, current edition—American Public Health Association, Inc.;

(ii) the methods in the Official Methods of Analysis of the Association of Official Analytical Chemists, current edition as published by the association of official analytical chemists; or

(iii) any other appropriate tests approved by the department.

(b) The results of these tests or analyses are admissible as prima facie evidence of the facts disclosed in a court, hearing, or proceeding arising under this chapter when the tests or analyses are identified by the sample numbers and verified by the department representative and analyst handling them. These tests and analyses must be designated and referred to as "official tests".

History: En. Sec. 11, Ch. 413, L. 1971; amd. Sec. 18, Ch. 310, L. 1974; amd. Sec. 5, Ch. 12, L. 1977; R.C.M. 1947, 3-2498; amd. Sec. 354, Ch. 418, L. 1995.

81-22-302. Taking and preservation of samples. (1) A person purchasing or sampling milk or cream for manufacture, sale, or shipment and paying for the milk or cream on the basis of the butterfat, protein, solids, or other compound components contained in the milk or cream as determined by official test, when receiving the milk or cream, shall take a sample of the milk or cream.

(2) All samples taken shall be plainly marked or labeled on the records of the purchaser or sampler to correspond with the name of the person from whom the purchase was made or sample obtained. The record of purchase shall also show the weight of the milk or cream, the results of the analysis, the date of sampling, and the amount paid. All milk and cream samples

on which payment for butterfat, protein, solids, or other components is based shall be kept and suitably preserved by the purchaser for a minimum of 14 days following testing in the case of milk and for at least 2 days in the case of cream. These samples are subject to retest by the department.

(3) This section does not prohibit the weighing or measuring of milk in and sampling of milk from farm bulk milk tanks or the use of composite or single samples of milk according to rules adopted by the department or the test procedures prescribed in this chapter.

History: En. Sec. 12, Ch. 413, L. 1971; amd. Sec. 19, Ch. 310, L. 1974; R.C.M. 1947, 3-2499.

81-22-303. Sampling and testing by department. (1) Except as provided in subsection (2), the department has the authority to sample, test, or retest samples of milk or cream or their products at any dairy, at the premises of any supplier of milk or cream for manufacturing purposes, or at any manufactured dairy products plant, milk plant, or cream buying or receiving station.

(2) The department may not sample, test, or retest milk or cream sold as homemade food pursuant to Title 50, chapter 49, part 2.

History: En. Sec. 16, Ch. 413, L. 1971; R.C.M. 1947, 3-24-103; amd. Sec. 20, Ch. 320, L. 2021.

Cross-References

Testing of milk, 81-23-105.

81-22-304. Department's right of entry into dairy or plants for inspection — penalty. (1) The department or its authorized agent has the right of entry during normal business hours, including Sundays and holidays, into a dairy supplying milk or cream for manufacturing purposes, manufactured dairy products plant, milk plant, cream receiving station, transportation facility, or any premises where dairy products, dairy manufactured products, or their substitutes or imitations are produced, manufactured, sold, offered for sale, or stored while in transit to inspect the dairy or plant, its facilities and products, or to obtain samples for testing or analysis. It is unlawful for a person to interfere with the department or its authorized agent in the performance of its duty to enter, inspect, or obtain samples.

(2) Violation of this section is a misdemeanor and subjects the offender to a fine of not less than $50 and not more than $500 or to imprisonment in the county jail for not less than 1 or more than 30 days or both such fine and imprisonment.

(3) The department's right of entry under this section does not apply to small dairies selling milk or cream as homemade food or a homemade food product pursuant to Title 50, chapter 49, part 2.

History: En. Sec. 27, Ch. 413, L. 1971; amd. Sec. 30, Ch. 310, L. 1974; R.C.M. 1947, 3-24-114; amd. Sec. 21, Ch. 320, L. 2021.

Cross-References

Search and seizure, Art. II, sec. 11, Mont. Const.; Title 46, ch. 5.

81-22-305. Cooperative agreements with other agencies. (1) The department may enter into cooperative working agreements with state, county, city, and town departments and their political or departmental subdivisions to facilitate the performance of its functions or duties.

(2) This section permits the department to establish cooperative working agreements with health departments, sanitarians, or health officers when special investigations, sampling, or analyses are considered advisable.

History: En. Sec. 28, Ch. 413, L. 1971; amd. Sec. 31, Ch. 310, L. 1974; R.C.M. 1947, 3-24-115.

Part 4
Sanitation, Quality, and Labeling Requirements

81-22-401. Grading of milk — condemnation of unsafe milk. Except for milk or cream sold as homemade food or a homemade food product pursuant to Title 50, chapter 49, part 2, milk or cream purchased for use in milk plants or for use in a manufactured dairy product in this state must be graded by licensed graders, weighers, and samplers. It is unlawful to sell, purchase, or use milk or cream for a food purpose if the milk or cream is found to be musty, adulterated, rancid, dirty, with marked undesirable odors or flavors, or to contain foreign objects, fragments, substances, or excessive bacteria. The milk or cream grader or the department shall condemn

the milk or cream and may add to the milk or cream a nontoxic coloring substance or rennet and return it to or leave it with the producer with an explanation of the cause for rejection.

History: En. Sec. 17, Ch. 413, L. 1971; amd. Sec. 23, Ch. 310, L. 1974; R.C.M. 1947, 3-24-104; amd. Sec. 22, Ch. 320, L. 2021.

81-22-402. Employment of grader, weigher, and sampler — revocation of operator's license. (1) Persons receiving or purchasing milk or cream and persons collecting milk or cream on milk or cream routes shall provide a licensed grader, weigher, and sampler at each receiving station or for each route.

(2) A person who knowingly employs an unlicensed person as a grader, weigher, and sampler or one whose license has been revoked or suspended is subject to revocation of that person's own license to operate a manufactured dairy products plant or cream or milk receiving station or to the penalties prescribed in this chapter.

History: En. Sec. 18, Ch. 413, L. 1971; amd. Sec. 24, Ch. 310, L. 1974; R.C.M. 1947, 3-24-105(1), (3); amd. Sec. 2706, Ch. 56, L. 2009.

Cross-References

Penalties for violation, Title 81, ch. 22, part 6.

81-22-403. Plans for construction, remodeling, or relocation of manufacturing plant. (1) Before the construction, extensive remodeling, or relocation of a dairy products manufacturing plant, detailed plans must be submitted to the department for review and approval before construction, remodeling, or relocation begins. The plans must show:

(a) size of rooms;
(b) type of building material;
(c) lighting and electrical system;
(d) ventilation;
(e) location of water supply;
(f) sewage disposal;
(g) materials to be used in floors, walls, and ceilings;
(h) location and type of floor drains;
(i) plumbing, plumbing fixtures, equipment; and
(j) the makes, models, and serial numbers of new or used equipment or machinery being added to or replacing existing equipment or machinery.

(2) Replacement equipment must be of the NSF or 3A standard approved types unless otherwise approved by the department. Construction and materials must conform to rules of the department and of building, electrical, and plumbing codes in effect in the area.

(3) Wastewater, sewage, and air pollutants must be disposed by means approved by the department of environmental quality, and evidence must be submitted that approval has been obtained from the department of environmental quality.

History: En. Sec. 23, Ch. 413, L. 1971; amd. Sec. 27, Ch. 310, L. 1974; R.C.M. 1947, 3-24-110; amd. Sec. 355, Ch. 418, L. 1995.

81-22-404. Removal or destruction of products in case of potential health hazards. (1) When epidemiological evidence indicates or the likelihood exists that a dairy or manufactured dairy products plant is producing, manufacturing, storing, handling, or offering for sale milk or a manufactured dairy product that is adulterated or that may be detrimental to the health or safety of the consumer, the department may request the department of public health and human services to remove the product from the market or to hold, dispose of, destroy, or treat the product so that it no longer constitutes a potential health hazard.

(2) It is unlawful for a person to violate an order that requires the product's removal from the market or its retention, disposal, destruction, or treatment. Violation is punishable as a misdemeanor, and each violation is subject to a fine of not less than $25 or more than $250 or to imprisonment in the county jail for not more than 30 days, or both fine and imprisonment.

History: En. Sec. 26, Ch. 413, L. 1971; amd. Sec. 29, Ch. 310, L. 1974; R.C.M. 1947, 3-24-113; amd. Sec. 356, Ch. 418, L. 1995; amd. Sec. 554, Ch. 546, L. 1995.

81-22-405. Labeling of cheese containers. Except for a small dairy selling milk or cream as homemade food or a homemade food product pursuant to Title 50, chapter 49, part 2, it is unlawful and punishable as a misdemeanor for any person to offer for sale, expose for sale, or sell any cheese in any container or wrapper unless such container or wrapper bears a legible

label or inscription indicating the net weight, type or style of cheese, and the manufacturer's or distributor's name and address or plant number.

History: En. Sec. 30, Ch. 413, L. 1971; R.C.M. 1947, 3-24-117(part); amd. Sec. 23, Ch. 320, L. 2021.

Cross-References

Penalty for violation, 81-22-601.

81-22-406. Products to be kept at safe temperature. All manufactured dairy products which are handled, displayed, transported, exposed for sale, offered for sale, or sold in Montana shall be considered perishable and potentially hazardous and shall be kept at safe temperature or below; provided, however, that:

(1) nothing in this requirement shall be construed as prohibiting higher temperatures which are necessary for curing, ripening, or aging of certain cheeses and cultured products; and

(2) this section does not apply to manufactured dairy products packaged in hermetically sealed containers or sterile manufactured dairy products which do not require refrigeration for their safekeeping.

History: En. Sec. 30, Ch. 413, L. 1971; R.C.M. 1947, 3-24-117(part).

81-22-407. Sanitary regulation of imported products. (1) All manufactured dairy products or imitations or products made in semblance thereof, covered by this chapter, shipped into Montana for sale, display, or use must be produced under the same or equivalent sanitary regulations and requirements as govern the production of such products in Montana.

(2) Unless the sanitary conditions of manufacture and standards of identity conform to the same or equivalent standards required by the laws or regulations of this state, such products shall not be sold, given away, displayed, transported into, or used in Montana.

History: En. Sec. 31, Ch. 413, L. 1971; R.C.M. 1947, 3-24-118.

81-22-408. Manufacturer's and wholesaler's or retailer's names to appear on package — use of codes and numbers permitted. (1) All manufactured dairy products sold, offered, displayed, or exposed for sale at wholesale or retail in this state, wherever manufactured, must be packaged in a protective wrapper or package and must have the manufacturer's and wholesaler's or retailer's names clearly printed in a conspicuous place on the package or wrapper in which it is sold.

(2) If a manufactured dairy product is packaged in a plant other than that of the plant whose name appears on the package or wrapper, the package or wrapper shall also show the name of the plant at which the product was packaged or wrapped.

(3) This section does not prevent the use of codes or numbers which designate the packaging or wrapping plant if these codes or numbers are registered with the department.

History: En. Sec. 32, Ch. 413, L. 1971; amd. Sec. 33, Ch. 310, L. 1974; R.C.M. 1947, 3-24-119; amd. Sec. 14, Ch. 14, L. 1979.

81-22-409. Adulterating milk or cream unlawful. (1) It shall be unlawful for any person to adulterate milk or cream produced or sold for manufacturing purposes or for any manufactured dairy product to contain an adulterant. For purposes of this chapter, the presence of any antimicrobial substance, pesticide residuals, unapproved coloring, food additives, or foreign substances added directly to or assimilated into such products which are not explicitly allowed in the Code of Federal Regulations, except for the addition of adulterants for rejection purposes, shall be deemed adulterated. Violations of this subsection shall be misdemeanors and shall be punishable by fine or imprisonment, or both, as provided in this chapter.

(2) It shall be unlawful for any person to sell, manufacture, exchange, display, or offer or expose for sale or exchange, as milk or cream, any impure, colored, adulterated, or unwholesome milk or cream or any substance in the semblance or imitation of milk or cream, nor shall any such impure, colored, adulterated, or unwholesome milk or cream be used in the manufacture of any article of food for human beings.

History: (1)En. Sec. 37, Ch. 413, L. 1971; Sec. 3-24-124, R.C.M. 1947; (2)En. Sec. 33, Ch. 413, L. 1971; Sec. 3-24-120, R.C.M. 1947; R.C.M. 1947, 3-24-120, 3-24-124.

81-22-410. Manufacture, sale, or importation of products containing extraneous fats. It shall be unlawful for any person to manufacture, mix, compound with, or add to milk, cream, or any manufactured dairy products or to transport into Montana any manufactured dairy product containing foreign animal fats or foreign animal or vegetable oils or products containing

nonapproved ingredients with the intent to sell the same as milk, cream, or manufactured dairy products except as allowed under the law and/or regulations of Montana, nor shall any person possess, solicit orders for display, or sell any such article, substance, or compound as or for milk, cream, or manufactured dairy products.

History: En. Sec. 34, Ch. 413, L. 1971; R.C.M. 1947, 3-24-121.

81-22-411. Filled dairy products unlawful — exceptions. (1) Filled dairy products resemble genuine dairy products so closely that they lend themselves readily to substitution for and confusion with such dairy products and in many cases cannot be distinguished from genuine dairy products by the ordinary consumer or ordinary laboratory procedures. The manufacture, sale, exchange, purveying, transportation, possession, or offering for sale or exchange or purveyance of filled dairy products lends itself to substitution, confusion, deception, and fraud and if permitted, tends to interfere with the orderly and fair marketing of foods essential to the well-being of the people of this state. It is hereby declared to be the purpose of this chapter to:

(a) correct, prevent, and eliminate the condition above referred to;

(b) protect the public from confusion, fraud, and deception;

(c) prohibit practices inimical to the general welfare; and

(d) promote the orderly and fair marketing of essential foods.

(2) It is unlawful:

(a) for any person to manufacture, sell, exchange, display, purvey, transport, or possess any filled dairy product or to offer or expose for sale or exchange or to be purveyed any such product in intrastate commerce;

(b) for any person owning or operating a bakery, confectionery shop, factory, or other place where food products are prepared or manufactured for sale, exchange, or purveyance to the public in intrastate commerce to utilize any filled dairy product as an ingredient in any food product so manufactured or prepared;

(c) for any person knowingly to sell, exchange, purvey, transport, or possess any food product in intrastate commerce in which any filled dairy product is an ingredient.

(3) The term "filled dairy product" does not mean or include:

(a) oleomargarine;

(b) any distinctive proprietary food compound not readily mistaken for a dairy product where such compound is customarily used on the order of a physician and is prepared and designed for medicinal or special dietary use and prominently so labeled;

(c) any frozen dessert containing animal fat (other than butterfat) or vegetable fat when the container is properly labeled;

(d) any dairy product flavored with chocolate or cocoa where the fats or oils other than milk fat contained in such product do not exceed the amount of cacao fat naturally present in the chocolate or cocoa used; or

(e) any dairy product in which the vitamin content has been increased and food oil utilized as a carrier of such vitamins provided the quantity of such food oil does not exceed 1/100 of 1% of the weight of the finished dairy product.

History: En. Sec. 35, Ch. 413, L. 1971; amd. Sec. 6, Ch. 12, L. 1977; R.C.M. 1947, 3-24-122.

81-22-412. Manufactured products to conform to standards of identity. Except for a small dairy selling milk or cream as homemade food or a homemade food product pursuant to Title 50, chapter 49, part 2, it is unlawful for any person to manufacture, display, transport, sell, or offer for sale in Montana as a manufactured dairy product any substance or product which does not conform to the standards of identity for such product as defined in the Code of Federal Regulations or to the standard of identity established by the department.

History: En. Sec. 36, Ch. 413, L. 1971; R.C.M. 1947, 3-24-123; amd. Sec. 24, Ch. 320, L. 2021.

81-22-413. Pasteurization required. (1) All milk and cream used in the manufacture of any dairy product or products made in semblance or imitation of dairy products sold, offered for sale, purveyed, stored, displayed, or transported in Montana must be pasteurized. However, cheese held, stored, or aged for at least 60 days at not less than 35 degrees F is not required to be made from pasteurized milk or cream but must be labeled "made from raw or unpasteurized milk or unpasteurized cream", as the case may be. Other cultured raw or unpasteurized dairy products that can be made safe by aging must be similarly aged and labeled as required above.

(2) The pasteurization and labeling requirements of this section do not apply to milk or cream sold as homemade food or a homemade food product pursuant to Title 50, chapter 49, part 2.

History: En. Sec. 39, Ch. 413, L. 1971; R.C.M. 1947, 3-24-126; amd. Sec. 15, Ch. 14, L. 1979; amd. Sec. 25, Ch. 320, L. 2021.

81-22-414. Pasteurization apparatus and records. (1) The department may adopt rules that it considers necessary to ensure proper control and use of all equipment used in the process of pasteurization. The department may require the operation of devices and apparatus that are needed to accurately record and indicate temperatures to which and the length of time for which the pasteurized product has been heated, including those periods and temperatures when the equipment is cleaned and sanitized by C.I.P. method. A person using pasteurizing equipment in this state shall properly record and have available to the department for the preceding 2 months all records pertaining to the pasteurization of any product. These records must at all times be open to the inspection of the department, the department of public health and human services, and all other state, county, and municipal officers charged with the enforcement of laws and ordinances respecting dairy products or the public health.

(2) Pasteurizing equipment that records temperatures or controls the time of holding must be timed, set, and sealed by the department. The seals may not be removed or broken without first notifying the department.

History: En. Sec. 40, Ch. 413, L. 1971; amd. Sec. 34, Ch. 310, L. 1974; amd. Sec. 7, Ch. 12, L. 1977; R.C.M. 1947, 3-24-127; amd. Sec. 357, Ch. 418, L. 1995; amd. Sec. 555, Ch. 546, L. 1995.

81-22-415. Pasteurization labeling. It is unlawful for a person to sell, offer for sale, exchange, or have in the person's possession milk, cream, or a manufactured dairy product in a container or package marked or labeled or in any way designating the contents of the container or package as "pasteurized" unless it has been treated by an approved process of pasteurization as required by the department.

History: En. Sec. 41, Ch. 413, L. 1971; amd. Sec. 35, Ch. 310, L. 1974; R.C.M. 1947, 3-24-128; amd. Sec. 2707, Ch. 56, L. 2009.

81-22-416. Milk and manufactured dairy products to conform to standards. Except for milk or cream sold as homemade food or a homemade food product pursuant to Title 50, chapter 49, part 2, all milk and cream used in manufactured dairy products, and the manufactured dairy products, must conform to the standards of purity, quality, and wholesomeness as provided in this chapter or in the regulations promulgated under the authority of this chapter.

History: En. Sec. 44, Ch. 413, L. 1971; R.C.M. 1947, 3-24-131; amd. Sec. 26, Ch. 320, L. 2021.

81-22-417. Making or selling products in violation of chapter prohibited — penalty. It is unlawful for a person, firm, or corporation or its servant or agent to manufacture, sell, or expose or offer for sale or exchange butter or other substance or commodity defined in this chapter containing less butterfat or other ingredient than required by this chapter. A violator is guilty of a misdemeanor and is punishable under 81-22-601.

History: En. Sec. 4, Ch. 93, L. 1929; amd. Sec. 1, Ch. 39, L. 1931; re-en. Sec. 2620.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1937; amd. Sec. 8, Ch. 310, L. 1974; amd. Sec. 1, Ch. 12, L. 1977; R.C.M. 1947, 3-2404(18).

81-22-418. Posting prices of butterfat required. All persons who buy milk or cream for manufacturing purposes shall post the current prices for butterfat or other component content of milk or cream in a conspicuous place in the factory or place of business. Such price schedule may be based upon butterfat, protein, solids, or other components of milk or cream and shall indicate upon which of such basis payment is made.

History: En. Sec. 45, Ch. 413, L. 1971; R.C.M. 1947, 3-24-132.

81-22-419. Requirements for containers and equipment. All containers and equipment used in the manufacture, storage, holding display, and transportation of any manufactured dairy product shall be nontoxic, easily cleanable, and free from dents, cracks, crevices, rust, and any other condition which would prevent cleaning and sanitizing.

History: En. Sec. 47, Ch. 413, L. 1971; R.C.M. 1947, 3-24-134.

81-22-420. Labeling of animal or vegetable fat contents on frozen desserts. (1) Any frozen dessert made in the semblance of or in imitation of ice cream in this chapter, which contains any amount of animal fat (other than milk fat) or vegetable fat or oil (other than any

such fat or oil which is naturally present in any flavoring ingredient), must be labeled as an animal fat product or vegetable fat product, or a combination of both, as the case may be. Such animal fat or vegetable fat products must be manufactured from a pasteurized mix which has been processed in a licensed manufacturing dairy product plant. All persons manufacturing, offering for sale or exchange, or selling such animal fat or vegetable fat frozen desserts are subject to the sanitary, reporting, and licensing regulations of this chapter and of the regulations promulgated under the authority of this chapter.

(2) No representation may be made by statement, word, grade designation, design, symbol, device, or in any other manner on any container, package, or wrapper or on any advertising media that such animal fat or vegetable fat product, or combination thereof, is ice cream, sherbet, or any of their low-fat counterparts or derivatives or any other products which are prohibited from containing animal or vegetable fats.

(3) The container, package, or wrapper containing such animal fat or vegetable fat frozen dessert must be clearly and plainly marked, labeled, or printed on the outside in boldfaced letters with the words, "animal fat product", "vegetable fat product", "animal-vegetable fat product", or "vegetable-animal fat product", as the case may be, and shall bear thereon the common or usual name of each of the ingredients therein, including the fats or oils, except that spices, flavorings, or colorings may be designated as such without naming each.

(4) The labeling requirements of this section do not apply to milk or cream sold as homemade food or a homemade food product pursuant to Title 50, chapter 49, part 2.

History: En. Sec. 48, Ch. 413, L. 1971; R.C.M. 1947, 3-24-135; amd. Sec. 27, Ch. 320, L. 2021.

81-22-421. Labeling on manufactured dairy products to conform to requirements. Except for milk or cream sold as homemade food or a homemade food product pursuant to Title 50, chapter 49, part 2, labeling on manufactured dairy products must conform to requirements of the Food, Drug, and Cosmetic Act and to the other requirements that are adopted by the department or the department of public health and human services.

History: En. Sec. 49, Ch. 413, L. 1971; amd. Sec. 37, Ch. 310, L. 1974; R.C.M. 1947, 3-24-136; amd. Sec. 358, Ch. 418, L. 1995; amd. Sec. 556, Ch. 546, L. 1995; amd. Sec. 28, Ch. 320, L. 2021.

Cross-References

Montana Food, Drug, and Cosmetic Act, Title 50, ch. 31.

Part 5
Records and Reports

81-22-501. Required records and reports — examination. The department may require dairies and dairy product manufacturers to maintain and produce for examination or to report the records necessary for carrying out its duties under this chapter.

History: En. Sec. 5, Ch. 413, L. 1971; amd. Sec. 13, Ch. 310, L. 1974; R.C.M. 1947, 3-2492.

81-22-502. Monthly report of plant operator — penalty. A person operating a manufactured dairy products plant in this state shall send to the department once a month, not later than the 10th day of the month, a full report of the amounts of butter, cheese, frozen dessert, ice cream, low-fat ice cream, sherbet, water ices, ice milk, freezer-made milk shakes, or other dairy products handled or manufactured during the preceding month, as requested by the department. Any person failing to render the report required by this section or failing to make the report by the date due is guilty of a misdemeanor and subject to the penalties provided in this chapter.

History: En. Sec. 24, Ch. 413, L. 1971; amd. Sec. 28, Ch. 310, L. 1974; R.C.M. 1947, 3-24-111.

Cross-References

Penalties for violation, Title 81, ch. 22, part 6.

81-22-503. Buyers and plants to make records available to department. (1) Persons, including cooperatives, who buy or sell milk or cream on the basis of butterfat, protein, solids, or other component content of milk or cream shall make available to the department, on its request, records showing the amounts of milk or cream sold or purchased, the price per pound, the amount paid, the sampling period for which the amount was paid, and the name and address of the person to whom payment was made or from whom payment was received.

(2) A manufactured dairy product plant, on request by the department, shall make available production records of dairy manufactured products covered by this chapter and manufactured products made in semblance or imitation of these dairy products.

(3) Small dairies selling milk or cream as homemade food or a homemade food product pursuant to Title 50, chapter 49, part 2, are exempt from the recordkeeping requirements of this section.

History: En. Sec. 29, Ch. 413, L. 1971; amd. Sec. 32, Ch. 310, L. 1974; R.C.M. 1947, 3-24-116; amd. Sec. 29, Ch. 320, L. 2021.

Part 6
Penalties

81-22-601. Penalties for violations. (1) A person who violates this chapter, fails to comply with the rules adopted under this chapter, or fails or neglects to obey a lawful order of the department made under this chapter, is guilty of a misdemeanor.

(2) Unless a specific penalty is provided in this chapter or rules for the offense, the offender shall be fined not less than $25 and not more than $500 or imprisoned in the county jail for not to exceed 6 months or both fined and imprisoned.

History: En. Sec. 50, Ch. 413, L. 1971; amd. Sec. 38, Ch. 310, L. 1974; R.C.M. 1947, 3-24-137.

81-22-602. Deceit in grade, measure, or test of milk and cream unlawful. (1) No person may use a measure or grading or testing apparatus which does not comply with the standards of the department or make any false or inaccurate statement or otherwise deceive or defraud a producer or other person concerning the weight, measure, butterfat content, or other component content of milk or cream.

(2) A person, firm, or corporation who violates this section is guilty of a misdemeanor and shall be fined not more than $300 or imprisoned in the county jail for not more than 2 months or both fined and imprisoned. The department may revoke a license issued to a person, firm, or corporation upon conviction for violation of this section.

History: (1)En. Sec. 1, Ch. 182, L. 1931; amd. Sec. 1, Ch. 169, L. 1933; re-en. Sec. 3572.1, R.C.M. 1935; Sec. 3-113, R.C.M. 1947; amd. and redes. 3-24-138 by Sec. 3, Ch. 218, L. 1974; amd. Sec. 8, Ch. 12, L. 1977; Sec. 3-24-138, R.C.M. 1947; (2)En. Sec. 2, Ch. 182, L. 1931; amd. Sec. 2, Ch. 169, L. 1933; re-en. Sec. 3572.2, R.C.M. 1935; Sec. 3-114, R.C.M. 1947; amd. and redes. 3-24-139 by Sec. 4, Ch. 218, L. 1974; Sec. 3-24-139; R.C.M. 1947; R.C.M. 1947, 3-24-138, 3-24-139.

CHAPTER 23
MILK PRICE CONTROL

Part 1 — General Administration

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Part 1
General Administration

81-23-101. Definitions. (1) Unless the context requires otherwise, in this chapter, the following definitions apply:

(a) "Board" means the board of milk control provided for in 2-15-3105.

(b) (i) "Class" refers to the classes of utilization of milk that the board defines by rule.

(ii) In adopting rules under this subsection (1)(b), the board shall use the current definitions of classes of utilization of milk that are found in 7 CFR, part 1000.40, except that the board may combine any of the classes of milk provided for in the federal definitions into a single class.

(c) "Consumer" means a person or an agency, other than a dealer, who purchases milk for consumption or use.

(d) "Dealer" means a producer, distributor, producer-distributor, jobber, or independent contractor.

(e) (i) "Distributor" means a person purchasing milk from any source, either in bulk or in packages, and distributing it for consumption in this state. The term includes what are commonly known as jobbers and independent contractors.

(ii) The term does not include a person purchasing milk from a dealer licensed under this chapter for resale over the counter at retail or for consumption on the premises.

(f) "Licensee" means a person who holds a license from the board.

(g) "Market" means an area of the state designated by the board as a natural marketing area.

(h) "Milk" means the lacteal secretion of a dairy animal or animals, including those secretions when raw and when cooled, pasteurized, standardized, homogenized, recombined, concentrated fresh, or otherwise processed and all of which are designated as grade A by a constituted health authority and including those secretions that are in any manner rendered sterile or aseptic, notwithstanding whether they are regulated by any health authority of this or any other state or nation.

(i) "Milk price forward contract" means a voluntary agreement between a distributor and a producer to establish a mechanism to adjust a future producer price on a future delivery of milk at a future date, as a means of hedging the future milk price received by the producer.

(j) "Person" means an individual, firm, corporation, or cooperative association or the dairy operated by the department of corrections at the Montana state prison.

(k) "Producer" means a person who produces milk for consumption in this state and sells it to a distributor.

(l) "Producer prices" means those prices at which milk owned by a producer is sold in bulk to a distributor.

(m) "Producer-distributor" means a person both producing and distributing milk for consumption in this state.

(n) "Retailer" means a person selling milk in bulk or in packages over the counter at retail or for consumption on the premises and includes but is not limited to retail stores of all types, restaurants, boardinghouses, fraternities, sororities, confectioneries, public and private schools, including colleges and universities, and both public and private institutions and instrumentalities of all types and description.

(2) The board may assign new milk products not provided for under 7 CFR, part 1000.40, to the class that the board considers proper.

History: En. Sec. 3, Ch. 204, L. 1939; amd. Sec. 1, Ch. 192, L. 1959; amd. Sec. 3, Ch. 4, L. 1967; amd. Sec. 1, Ch. 107, L. 1971; amd. Sec. 89, Ch. 431, L. 1975; R.C.M. 1947, 27-403; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 1, Ch. 56, L. 1993; amd. Sec. 1, Ch. 242, L. 1995; amd. Sec. 2, Ch. 333, L. 1995; amd. Sec. 557, Ch. 546, L. 1995; amd. Sec. 1, Ch. 135, L. 2003; amd. Sec. 1, Ch. 23, L. 2007; amd. Sec. 2, Ch. 361, L. 2009; amd. Sec. 1, Ch. 189, L. 2021.

81-23-102. Policy. (1) The legislature declares that:

(a) milk is a necessary article of food for human consumption;

(b) the production and maintenance of an adequate supply of healthful milk of proper chemical and physical content, free from contamination, is vital to the public health and welfare;

(c) the production, transportation, processing, storage, distribution, and sale of milk in the state of Montana is an industry affecting the public health and interest;

(d) health regulations alone are insufficient to prevent disturbances in the milk industry and to safeguard the consuming public from further inadequacy of a supply of this necessary commodity;

(e) it is the policy of this state to promote, foster, and encourage the intelligent production and orderly marketing of milk and products manufactured from milk and to make the distribution of milk and products manufactured from milk between the producer and consumer as direct as can be efficiently and economically done, and to stabilize the marketing of those commodities;

(f) due to the nature of milk and the conditions surrounding the production and marketing of milk and due to the vital importance of milk to the health and well-being of the citizens of this state, it is necessary to invoke the powers of the state to provide constant supervision and regulation of the milk industry of the state;

(g) milk is a perishable commodity that is easily contaminated with harmful bacteria, that cannot be stored for any great length of time, that must be produced and distributed fresh daily, and the supply of which cannot be regulated from day to day but, due to natural and seasonal conditions, must be produced on a constantly uniform and even basis;

(h) the demand for this perishable commodity fluctuates from day to day and from time to time making it necessary that the producers and distributors produce and carry on hand a surplus of milk to guarantee and ensure to the consuming public an adequate supply at all times;

(i) this surplus of milk, though necessary and unavoidable, unless regulated, tends to undermine the milk industry;

(j) due to the nature of milk and the conditions surrounding its production and marketing, unless the producers are guaranteed and ensured a reasonable profit on milk, the supply and quality of milk are affected to the detriment of and against the best interest of the citizens of this state;

(k) where no supervision and regulation are provided for the orderly and profitable marketing of milk, past experience has shown that the economic status of both producers and distributors of milk is adversely affected, thereby entailing loss and hardship on all within the community with whom these producers and distributors carry on business relations;

(l) due to the nature of milk and the conditions surrounding its production and distribution, the natural law of supply and demand has been found inadequate to protect the industry in this and other states and in the public interest it is necessary to provide state supervision and regulation of the milk industry in this state.

(2) The general purpose of this chapter is to protect and promote public welfare and to eliminate unfair and demoralizing trade practices in the milk industry. It is enacted in the powers of the state.

History: (1)En. Sec. 1, Ch. 204, L. 1939; amd. Sec. 1, Ch. 4, L. 1967; Sec. 27-401, R.C.M. 1947; (2)En. Sec. 2, Ch. 204, L. 1939; amd. Sec. 2, Ch. 4, L. 1967; amd. Sec. 88, Ch. 431, L. 1975; Sec. 27-402, R.C.M. 1947; R.C.M. 1947, 27-401, 27-402; amd. Sec. 2, Ch. 242, L. 1995; amd. Sec. 1, Ch. 426, L. 2023.

81-23-103. General powers of department and board. (1) Except for milk produced from a small dairy as defined in 81-21-101, the board shall supervise, regulate, and control the milk industry of this state, including the production, processing, storage, distribution, and sale of milk sold for consumption in this state. The board shall conduct hearings and make determinations under this chapter and under board rules and orders promulgated pursuant to this chapter. This chapter does not affect the status, force, or operation of any provision of public health laws, county board of health rules, or municipal ordinances for the promotion or protection of the public health.

(2) The department may cooperate with the department of public health and human services, a county or city board of health, or the department of agriculture in enforcing this chapter.

(3) The department shall assist the board by investigating all matters pertaining to the production, processing, storage, distribution, and sale of milk in this state and by bringing proceedings to enforce the orders of the board. The department, in exercising its enforcement duties, may subpoena milk dealers, their records, books, and accounts, and any other person from whom information may be desired or considered necessary to carry out the purposes and intent of this chapter. The department may take depositions of witnesses who are sick or absent from the state or who cannot otherwise appear in person before the department at its offices. The department shall give at least 10 days' notice to the proposed witness.

(4) The department shall provide staff to the board as provided in 2-15-121 to assist in technical, enforcement, and regulatory activities.

History: **En. Sec. 5, Ch. 204, L. 1939; amd. Sec. 3, Ch. 192, L. 1959; amd. Sec. 4, Ch. 4, L. 1967; amd. Sec. 1, Ch. 267, L. 1975; amd. Sec. 90, Ch. 431, L. 1975; amd. Sec. 1, Ch. 19, L. 1977; R.C.M. 1947, 27-405; amd. Sec. 3, Ch. 333, L. 1995; amd. Sec. 359, Ch. 418, L. 1995; amd. Sec. 558, Ch. 546, L. 1995; amd. Sec. 3, Ch. 361, L. 2009; amd. Sec. 30, Ch. 320, L. 2021.**

Cross-References

Montana Administrative Procedure Act — contested case procedure, Title 2, ch. 4, part 6.

Creation of Department of Livestock, 2-15-3101.

Municipal regulation of foodstuffs, 7-21-4202.

81-23-104. Rules and orders. The board may adopt and enforce rules and orders necessary to carry out the provisions of this chapter and any orders adopted under it by the board. A rule or order must be posted for public inspection in the main office of the department for 30 days, and a copy must be filed in the office of the department. A copy must also be sent by registered or certified letter to the secretary of each area, except in the case of an order directed only to a person or persons named in it, which must be served by personal delivery of a copy or by mailing a copy to each person to whom the order is directed or, in the case of a corporation, to any officer or agent of the corporation upon whom a summons may be served in accordance with laws of this state. The posting, in the main office of the department, of a rule or order not required to be personally served as provided in this section and the filing in the office of the department is sufficient notice to all persons affected by the rule or order. A rule or order when properly posted and filed or served, as provided in this section, has the force of law.

History: **En. Sec. 13, Ch. 204, L. 1939; amd. Sec. 97, Ch. 431, L. 1975; R.C.M. 1947, 27-413; amd. Sec. 4, Ch. 361, L. 2009.**

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

81-23-105. Testing of milk. (1) For the purpose of determining the value of milk supplied by producers during routine audits of milk processing plants that receive raw milk directly from producers, the department may establish a program of testing raw milk.

(2) The department may levy an assessment on licensed producers to secure the necessary funds to administer this program. This assessment is in addition to those provided in 81-23-202.

(3) All personnel employed in the sampling and testing program must be licensed by the animal health division of the department.

(4) The department may conduct all types of sampling, grading, and testing techniques that the department considers necessary to carry out the intent of this section.

History: **En. 27-430 by Sec. 1, Ch. 245, L. 1977; R.C.M. 1947, 27-430; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 1, Ch. 316, L. 1985; amd. Sec. 4, Ch. 333, L. 1995.**

Cross-References

Sampling and testing by Department, 81-22-303.

81-23-106. Application. This chapter does not apply to foreign or interstate commerce except insofar as it may be effective in compliance with the United States constitution and with the laws of the United States. It is the intention of the legislature, however, that the instant, whenever that may be, that the handling within the state by a dealer of milk produced outside of the state becomes the subject of regulation by the state in the exercise of its police powers, the provisions of this chapter affecting intrastate milk immediately apply and the powers conferred by this chapter attach thereto.

History: **En. Sec. 23, Ch. 204, L. 1939; amd. Sec. 106, Ch. 431, L. 1975; R.C.M. 1947, 27-423(2).**

Part 2
Licensing

Part Cross-References

Montana Administrative Procedure Act — contested case procedure, Title 2, ch. 4, part 6.

Licensing of milk plants and dairies selling milk or cream for public consumption, 81-21-102.

81-23-201. Licenses to producers, producer-distributors, distributors, and jobbers. In a market where the provisions of this chapter apply, it is unlawful for a producer, producer-distributor, distributor, or jobber to produce, transport, process, store, handle, distribute, buy, or sell milk unless the dealer is properly licensed as provided by this chapter. It is unlawful for a person to buy, sell, handle, process, or distribute milk that the person knows or has reason to believe has been previously dealt with or handled in violation of any provision of this chapter. The board may decline to grant a license or may suspend or revoke a license already granted upon due cause and after hearings.

History: **En. Sec. 8, Ch. 204, L. 1939; amd. Sec. 4, Ch. 107, L. 1971; amd. Sec. 93, Ch. 431, L. 1975; R.C.M. 1947, 27-408; amd. Sec. 2708, Ch. 56, L. 2009; amd. Sec. 5, Ch. 361, L. 2009.**

81-23-202. Licenses — disposition of income. (1) A producer, producer-distributor, distributor, or jobber may not engage in the business of producing or selling milk subject to this chapter in this state without first having obtained a license from the department as provided in 81-22-202 or, in the case of milk entering this state from another state or foreign nation, without complying with the requirements of the Montana Food, Drug, and Cosmetic Act and without being licensed under this chapter by the board. The annual fee for the license is $2, is due before July 1, and must be deposited by the department in the general fund. The license required by this chapter is in addition to any other license required by state law or any municipality of this state. This chapter applies to every part of the state of Montana.

(2) In addition to the annual license fee, the board shall, in each year, before April 1, for the purpose of securing funds to administer and enforce this chapter, levy an assessment upon producers, producer-distributors, and distributors as follows:

(a) a fee per hundredweight on the total volume of all milk subject to this chapter produced and sold by a producer-distributor;

(b) a fee per hundredweight on the total volume of all milk subject to this chapter sold by a producer;

(c) a fee per hundredweight on the total volume of all milk subject to this chapter sold by a distributor, excepting that which is sold to another distributor.

(3) The board shall adopt rules fixing the amount of the fees under this section, including rules identifying the milk hundredweight equivalent conversion factor used for calculating the amount of the fees levied on manufactured dairy products. The amounts may not exceed levels sufficient to provide for the administration of this chapter. The fee assessed on a producer or on a distributor may not be more than one-half the fee assessed on a producer-distributor.

(4) (a) In addition to the fees established in subsections (1) through (3), the department shall assess a fee per hundredweight on the volume of all classes of milk produced and sold by a person licensed by the department to be used for the administration of the milk inspection and milk diagnostic laboratory functions of the department. The fee must be established pursuant to 81-1-102(2).

(b) A person licensed by the department shall report to the department on a monthly basis the volume of milk produced. All reporting documentation must be submitted on forms approved or provided by the department.

(5) The assessments upon producer-distributors, producers, and distributors must be paid before the 25th day of each month. The amount of the assessments must be computed by applying the fee designated by the board and the fee established in subsection (4) to the volume of milk sold in the preceding month.

(6) Failure of a producer-distributor, producer, or distributor to pay an assessment when due is a violation of this chapter, and the board may revoke a license upon due cause and after a hearing. A licensee shall pay all assessments accrued through the date a license is revoked under this section. A revoked license must be reinstated by the board upon payment of all accrued assessments and a delinquency fee established by rule.

(7) All assessments required by this chapter must be deposited by the department in the state special revenue fund. All costs of administering chapter 22 and this chapter, including the salaries of employees and assistants, per diem and expenses of board members, and all other disbursements necessary to carry out the purpose of chapter 22 and this chapter, must be paid out of the board money in that fund.

(8) The board may, if it finds the costs of administering and enforcing this chapter can be derived from lower rates, amend its rules to fix the rates at a less amount on or before April 1 in any year.

History: Ap. p. Sec. 9, Ch. 204, L. 1939; amd. Sec. 6, Ch. 192, L. 1959; amd. Sec. 157, Ch. 147, L. 1963; amd. Sec. 5, Ch. 107, L. 1971; amd. Sec. 2, Ch. 127, L. 1974; amd. Sec. 94, Ch. 431, L. 1975; Sec. 27-409, R.C.M. 1947; Ap. p. Sec. 23, Ch. 204, L. 1939; amd. Sec. 106, Ch. 431, L. 1975; Sec. 27-423, R.C.M. 1947; R.C.M. 1947, 27-409, 27-423(part); amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 566, L. 1993; amd. Sec. 3, Ch. 242, L. 1995; amd. Sec. 5, Ch. 333, L. 1995; amd. Sec. 2, Ch. 135, L. 2003; amd. Sec. 6, Ch. 361, L. 2009; amd. Sec. 1, Ch. 271, L. 2015; amd. Sec. 1, Ch. 79, L. 2017.

Cross-References

Montana Food, Drug, and Cosmetic Act, Title 50, ch. 31.

81-23-203. Application for licenses. An applicant for license to operate as a producer, producer-distributor, distributor, or jobber shall file a signed application upon a blank prepared by the department and containing the information required by the board. The application must certify the applicant to be the holder of all licenses required by the board for the conduct of the applicant's business or, in the case of milk entering this state from another state or foreign nation, compliance with the requirements of the Montana Food, Drug, and Cosmetic Act. The application must be accompanied by the license fee required to be paid.

History: En. Sec. 10, Ch. 204, L. 1939; amd. Sec. 7, Ch. 192, L. 1959; amd. Sec. 6, Ch. 107, L. 1971; amd. Sec. 95, Ch. 431, L. 1975; R.C.M. 1947, 27-410; amd. Sec. 6, Ch. 333, L. 1995; amd. Sec. 7, Ch. 361, L. 2009.

Cross-References

Small business licensing coordination, Title 30, ch. 16.

81-23-204. Declining, suspending, and revoking licenses — penalties in lieu of suspension or revocation. (1) The board may refuse to grant a license or may suspend or revoke a license already granted for due cause upon due notice and after hearing. The violation of any provisions of this chapter or of any lawful order or rule of the board, the failure or refusal to make required statements or reports, or failure to pay license or assessment fees are causes for which the board may suspend or revoke a license.

(2) In place of suspension or revocation of a license, the board may assess a civil penalty not to exceed $500 per day for each daily failure to comply with or each daily violation of the provisions of this chapter or of any lawful order or rule of the board. A penalty may not be assessed until after the cause of the penalty has been upheld following the notice and hearing requirements of subsection (1). If the person against whom a civil penalty is assessed fails to pay the civil penalty immediately, the board shall collect the civil penalty by a civil proceeding in the district court of the first judicial district. This penalty must be construed as civil and not criminal in nature. Any money received by the board as a result of collection of civil penalties must be paid into the state special revenue fund as provided by 81-23-403.

History: En. Sec. 11, Ch. 204, L. 1939; amd. Sec. 7, Ch. 107, L. 1971; amd. Sec. 96, Ch. 431, L. 1975; R.C.M. 1947, 27-411; amd. Sec. 3, Ch. 23, L. 1983; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 8, Ch. 361, L. 2009.

Cross-References

Montana Administrative Procedure Act — contested case procedure, Title 2, ch. 4, part 6.

81-23-205. Repealed. Sec. 7, Ch. 23, L. 1983.

History: En. Sec. 10, Ch. 192, L. 1959; amd. Sec. 7, Ch. 4, L. 1967; amd. Sec. 108, Ch. 431, L. 1975; R.C.M. 1947, 27-426.

Part 3
Regulation of Milk Prices

81-23-301. Repealed. Sec. 7, Ch. 23, L. 1983.

History: En. Sec. 6, Ch. 204, L. 1939; amd. Sec. 4, Ch. 192, L. 1959; amd. Sec. 2, Ch. 107, L. 1971; amd. Sec. 91, Ch. 431, L. 1975; R.C.M. 1947, 27-406.

81-23-302. Establishment of minimum prices. (1) The board shall, by adopting rules, fix minimum producer prices for classes of utilization of milk as defined by the board.

(2) The board shall establish prices by means of flexible formulas that must be devised so that the formulas bring about automatic changes in all minimum prices that are justified on the basis of changes in production, supply, processing, distribution, and retailing costs.

(3) The board shall consider the balance between production and consumption of milk, the costs of production and distribution, and prices in adjacent and neighboring areas and states so that minimum prices that are fair and equitable to producers and consumers may result.

(4) The board shall, when publishing notice of proposed rulemaking under authority of this section, set forth the specific factors that must be taken into consideration in establishing the formulas and, in particular, in determining costs of production and of the actual dollars and cents costs of production that preliminary studies and investigations of auditors or accountants in the department's employment indicate will or should be shown at the hearing so that all interested parties will have an opportunity to be heard and to question or rebut the considerations as a matter of record.

(5) Specific factors may include but are not limited to the following items:

(a) current and prospective supplies of milk in relation to current and prospective demands for milk for all purposes;

(b) the cost factors in producing milk, which must include among other things the prices paid by farmers generally, as used in parity calculations of the United States department of agriculture, prices paid by farmers for dairy feed in particular, and farm wage rates in this state;

(c) the alternative opportunities, both farm and nonfarm, open to milk producers, which must include among other things the prices received by farmers for all products other than milk, the prices received by farmers for beef cattle, and the percentage of unemployment in the state and nation as determined by appropriate state and federal agencies;

(d) the prices of butter, nonfat dry milk, and cheese;

(e) the need, if any, for freight or transportation charges to be deducted by distributors from producer prices for bulk milk.

(6) If the board at any time proposes to base all or part of an official order establishing or revising milk pricing formulas upon facts within its own knowledge, as distinguished from evidence that may be presented to it by the consuming public or the milk industry, the board shall, when publishing notice of proposed rulemaking under authority of this section, notify the consuming public and the milk industry of the specific facts within its own knowledge that it will consider so that all interested parties will have an opportunity to be heard and to question or rebut the facts as a matter of record.

(7) The board, after consideration of the evidence produced, shall make written findings and conclusions and shall fix by official rule the formula under which minimum producer prices for milk must be computed.

(8) This section may not be construed as requiring the board to promulgate a specific number of formulas, but it must be construed liberally so that the board may adopt a reasonable method of expression to accomplish the objective set forth in subsection (7).

(9) Each rule establishing or revising milk pricing formulas must classify milk by forms, classes, grades, or uses as the board considers advisable and must specify the minimum prices for the forms, classes, grades, and uses.

(10) Distributors who have processing facilities in this state shall, whenever possible, purchase milk from Montana producers for the processing of products to be sold in this state if milk is available from Montana producers at the price set by the board.

(11) The board shall adopt rules to regulate transportation rates that distributors, contract haulers, and others charge producers for interplant transportation of milk. An allowance for transportation of milk between plants may not be permitted unless it is found by the board to be necessary to permit the movement of milk in the public interest. The board may promulgate rules regarding the requirement for first call on Montana milk supplies as provided in subsection (10). Rules must be coordinated with those adopted pursuant to fair trade practices under 81-23-303.

(12) All milk purchased by a distributor must be purchased on a uniform basis. The basis to be used must be established by the board after the producers and the distributors have been consulted.

(13) The board may amend a rule in the same manner provided in this section for the original establishment of milk pricing formulas. The board may in its discretion, when it determines that the need exists, give notice of and hold statewide public hearings affecting establishment or revision of milk pricing formulas.

(14) Upon petition of a distributor or a majority of a distributor's producers, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for a base or quota plan as a method of payment by that distributor of producer prices. If the board finds that the evidence presented at the hearing warrants the establishment of a base or quota plan, the board shall proceed by order to establish the base or quota plan.

(15) (a) Upon petition by 10% or 20 of the licensed producers in Montana, whichever is less, or upon petition by a licensed producer-distributor or distributor, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for a statewide pooling arrangement as a method of payment of producer prices, provided that at the hearing, the board shall, among other things, specifically receive and consider evidence concerning production and marketing practices that have historically prevailed statewide. If the board finds that the evidence presented at the hearing warrants the establishment of a statewide pooling arrangement, the board shall proceed by order to establish the arrangement. An order is not effective until it is approved in a referendum conducted by the board by mail among affected producers, producer-distributors, and distributors. The order must be approved by a majority of the producers, producer-distributors, and distributors voting, representing more than 50% of the milk produced in Montana that is to be included in the proposed pool, based on each producer's average monthly production for the 12 months immediately preceding the referendum. If the board finds it necessary, the board may conduct more than one referendum on any order.

(b) The order of the board establishing the statewide pooling arrangement may include other provisions that the board considers necessary for the proper and efficient operation of the pool. These provisions may include but are not limited to:

(i) a statewide base or quota plan contemplated in subsection (14);

(ii) the establishment of a pool settlement fund to be administered by the department for the purpose of receiving payments from pool distributors or making payments to them as necessary in order to operate and administer the statewide pool; and

(iii) the establishment of a pool expense fund for the purpose of offsetting the costs to the department of administering the pool, funded by a special levy assessed against each pool producer.

(c) During the initial startup of a statewide pool, the department may draw from existing cash reserves to fund a pool settlement fund and a pool expense fund, but withdrawals from the cash reserve must be reimbursed.

(d) An order of the board establishing a statewide pooling arrangement that has been approved in a referendum may be rescinded in the same manner as provided for approval of the order under subsection (15)(a). The order may be amended without a referendum if, prior to amending the order, the board gives written notice of its intended action and holds a public hearing.

(16) The requirements of this section concerning notices of hearings for the establishment of milk pricing formulas apply to any hearings regarding base or quota plans or statewide pooling arrangements or abandonment of base or quota plans or statewide pooling arrangements.

(17) Rules adopted pursuant to this section must be audited for compliance by the department and enforced by the board. An enforcement action is subject to the provisions of 81-23-407.

History: **En. Sec. 7, Ch. 204, L. 1939; amd. Sec. 5, Ch. 192, L. 1959; amd. Sec. 5, Ch. 4, L. 1967; amd. Sec. 3, Ch. 107, L. 1971; amd. Sec. 1, Ch. 127, L. 1974; amd. Sec. 92, Ch. 431, L. 1975; amd. Sec. 2, Ch. 19, L. 1977; R.C.M. 1947, 27-407; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 4, Ch. 23, L. 1983; amd. Sec. 1, Ch. 274, L. 1987; amd. Sec. 4, Ch. 242, L. 1995; amd. Sec. 7, Ch. 333, L. 1995; amd. Sec. 17, Ch. 416, L. 1999; amd. Sec. 2, Ch. 23, L. 2007; amd. Sec. 9, Ch. 361, L. 2009.**

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

Creation of Board of Milk Control, 2-15-3105.

81-23-303. Rules of fair trade practices. (1) The board may adopt reasonable rules governing fair trade practices as they pertain to the transaction of business among licensees under this chapter and among licensees and the general public. Except for provisions regarding the requirement for first call on Montana milk supplies, as provided in 81-23-302(10), rules adopted pursuant to 81-23-302(11), and as provided in subsection (2), fair trade practice rules must contain but are not limited to provisions prohibiting the following methods of doing business that are unfair, unlawful, and not in the public interest:

(a) the payment, allowance, or acceptance of secret rebates, secret refunds, or unearned discounts by a person, whether in the form of money or otherwise;

(b) the giving of milk, cream, dairy products, services, or articles of any kind, except to bona fide charities, for the purpose of securing or retaining the fluid milk or fluid cream business of a customer;

(c) the extension to certain customers of special prices or services not available to all customers who purchase milk of like quantity under like terms and conditions; and

(d) the payment of a price lower than the applicable producer price, established by the board, by a distributor to a producer for milk that is distributed to any person, including agencies of the federal, state, or local government.

(2) A payment subject to a milk price forward contract that is less than the minimum producer price is not a violation of this section.

History: En. Sec. 14, Ch. 204, L. 1939; amd. Sec. 8, Ch. 192, L. 1959; amd. Sec. 98, Ch. 431, L. 1975; R.C.M. 1947, 27-414; amd. Sec. 5, Ch. 23, L. 1983; amd. Sec. 5, Ch. 242, L. 1995; amd. Sec. 75, Ch. 7, L. 2001; amd. Sec. 10, Ch. 361, L. 2009; amd. Sec. 2, Ch. 189, L. 2021.

81-23-304. Repealed. Sec. 17, Ch. 361, L. 2009.

History: En. Sec. 8, Ch. 107, L. 1971; amd. Sec. 99, Ch. 431, L. 1975; R.C.M. 1947, 27-414.1; amd. Sec. 6, Ch. 23, L. 1983.

81-23-305. Repealed. Sec. 17, Ch. 361, L. 2009.

History: En. Sec. 9, Ch. 107, L. 1971; amd. Sec. 100, Ch. 431, L. 1975; R.C.M. 1947, 27-414.2.

Part 4
Enforcement

81-23-401. Entry, inspection, and investigation. Except for the premises of a small dairy as defined in 81-21-101, the department may enter, at all reasonable hours, all places where milk is produced, processed, bottled, handled, or stored or where the books, papers, records, or documents relative to those transactions are kept, and may inspect and copy them in any place in this state. The department may administer oaths and take testimony for the purpose of ascertaining facts which, in the judgment of the department, are necessary to administer this chapter.

History: En. Sec. 15, Ch. 204, L. 1939; amd. Sec. 6, Ch. 4, L. 1967; amd. Sec. 101, Ch. 431, L. 1975; R.C.M. 1947, 27-415; amd. Sec. 11, Ch. 361, L. 2009; amd. Sec. 31, Ch. 320, L. 2021.

Cross-References

Search and seizure, Art. II, sec. 11, Mont. Const.; Title 46, ch. 5.

81-23-402. Reports of dealers — accounting system — records. (1) (a) The department may require licensees to file reports with it at reasonable or regular times that the board may require, showing the licensee's production, sale, or distribution of milk and any information considered necessary by the board that pertains to the production, sale, or distribution of milk, either under oath or otherwise, as the board may direct. Failure or refusal to file a report when directed to do so is grounds for the revocation of the license and is a violation for which the licensee may be fined as provided by this chapter, one or both, at the discretion of the board.

(b) The department and the board may request only the records necessary for establishing milk prices pursuant to this chapter. The department shall provide licensees with information concerning procedures a licensee may use to assert a claim of confidentiality with respect to constitutionally protected information that must be submitted to the department, such as trade secret or proprietary information.

(2) The board shall adopt a uniform system of accounting to be used by the distributor to account for the usage of all milk received by the distributor.

(3) A distributor and producer-distributor shall keep:

(a) a record of all milk, cream, or dairy products received, detailed as to location, names and addresses of suppliers, prices paid, deductions or charges made, and the use to which the milk or cream was put;

(b) a record of the quantity of each kind of milk or dairy product manufactured and the quantity and price of milk or dairy products sold;

(c) a complete record of all milk, cream, or dairy products sold, classified as to kind and grade, showing where sold, and the amount received in payment;

(d) a record of the wastage or loss of milk or dairy products;

(e) a record of the items of handling expense;

(f) a record of all refrigeration facilities sold for storage purposes to any person, showing types, sizes, and location of the facilities and the original or duplicate original of all agreements covering sales for them;

(g) other records that the board considers necessary for the proper enforcement of this chapter.

History: En. Sec. 16, Ch. 204, L. 1939; amd. Sec. 9, Ch. 192, L. 1959; amd. Sec. 102, Ch. 431, L. 1975; R.C.M. 1947, 27-416; amd. Sec. 12, Ch. 361, L. 2009.

81-23-403. Disposition of fines. (1) All fines assessed by a court, other than a justice's court, for violation of this chapter must be paid by the court to the department.

(2) All fines received by the department must be deposited with the state treasurer and must be placed by the treasurer in the state special revenue fund. Fines assessed for violations of this chapter are earmarked for the purposes of this chapter.

History: En. Sec. 17, Ch. 204, L. 1939; amd. Sec. 158, Ch. 147, L. 1963; amd. Sec. 103, Ch. 431, L. 1975; R.C.M. 1947, 27-417; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 58, Ch. 557, L. 1987; amd. Sec. 2710, Ch. 56, L. 2009.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

81-23-404. Cooperation with other governmental agencies. In order to secure a uniform system of milk control, the board shall confer and cooperate with the proper authorities of other states and of the United States, including the secretary of agriculture of the United States, and for those purposes, the board may conduct joint hearings, issue joint or concurrent orders, and exercise all its powers under this chapter.

History: En. Sec. 21, Ch. 204, L. 1939; amd. Sec. 104, Ch. 431, L. 1975; R.C.M. 1947, 27-421; amd. Sec. 13, Ch. 361, L. 2009.

81-23-405. Violations made misdemeanors — penalties. (1) Except for a person operating a small dairy as defined in 81-21-101, a person who produces, sells, distributes, or handles milk in any way, except as a consumer, without a license from the board as required by this chapter or who violates a lawful rule of the department or board is guilty of a misdemeanor punishable by a fine not exceeding $600. Each day's violation is a separate offense.

(2) The district courts have original jurisdiction in all criminal actions for violations of this chapter and in all civil actions for the recovery or enforcement of penalties provided for in this chapter. All of those actions, both criminal and civil, must be tried in the district court.

(3) The county attorneys, in their respective counties, shall diligently prosecute all violations of this chapter.

History: En. Sec. 22, Ch. 204, L. 1939; amd. Sec. 105, Ch. 431, L. 1975; R.C.M. 1947, 27-422; amd. Sec. 14, Ch. 361, L. 2009; amd. Sec. 32, Ch. 320, L. 2021.

81-23-406. Additional remedies. The board may begin any proceeding at law or in equity as may appear necessary to enforce compliance with this chapter or to enforce compliance with an order or rule of the board or department adopted under this chapter or to obtain a judicial interpretation of any of them. In addition to any other remedy, the board may apply to the district court of the district where the action arises for relief by injunction, mandamus, or any other appropriate remedy in equity without being compelled to allege or prove that an adequate remedy at law does not otherwise exist. The board may not be required to post bond in an action to which it is a party whether upon appeal or otherwise. All legal actions may be brought by or against the board or department in the name of the department, and it is not necessary in an action to which the department is a party that the action be brought by or against this state on relation of the department. The board may sue by its own attorney, and it may also call

upon a county attorney to represent it in the district court of the county attorney's county or the attorney general to represent it on appeal to the supreme court, or it may associate its own attorney with either in court.

History: En. Sec. 24, Ch. 204, L. 1939; amd. Sec. 107, Ch. 431, L. 1975; R.C.M. 1947, 27-424; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 8, Ch. 333, L. 1995; amd. Sec. 15, Ch. 361, L. 2009.

Cross-References

Injunctions, Title 27, ch. 19.
Mandamus, Title 27, ch. 26.

81-23-407. Appeal of action or decision. An entity receiving notice of a violation of a provision of this chapter may within 60 days of receiving the notice from the department or board submit a request to the board for a contested case proceeding pursuant to Title 2, chapter 4, part 6. Upon receiving a request, the board shall appoint a hearings examiner to conduct the hearing and issue a proposal for decision. The board shall issue a final decision within 90 days of receiving the proposal for decision.

History: En. Sec. 16, Ch. 361, L. 2009.

CHAPTERS 24 THROUGH 28
RESERVED

CHAPTER 29
RESOURCE AND PROPERTY PROTECTION

Part 1 — Feral Swine

81-29-101. Definitions.
81-29-102. Control of feral swine.
81-29-103. Presence of feral swine — notification — immediate threat.
81-29-104. Prohibitions.
81-29-105. Penalties for violations.
81-29-106. Authority — costs — rulemaking.

Part 1
Feral Swine

81-29-101. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Board" means the board of livestock provided for in 2-15-3102.

(2) "Feral swine" means a hog, boar, or pig that appears to be untamed, undomesticated, or in a wild state or appears to be contained for commercial hunting or trapping.

History: En. Sec. 1, Ch. 429, L. 2015.

81-29-102. Control of feral swine. A person, a state agency, or a federal agency authorized by the state or the federal government is allowed to control or eradicate feral swine.

History: En. Sec. 2, Ch. 429, L. 2015.

81-29-103. Presence of feral swine — notification — immediate threat. (1) Except as provided in subsection (2), a person who believes feral swine are present on private or public property shall notify the board and, if authorized, assist in the control or eradication of the feral swine.

(2) A person or the person's agent who encounters feral swine on property owned or leased by that person may immediately eradicate the feral swine if the feral swine:

(a) poses an immediate threat of harm to a person or property; or

(b) will expand its range without immediate eradication.

(3) A person who eradicates a feral swine pursuant to subsection (2) shall notify the board as soon as practicable, but no later than the limit established by board rule. The person shall follow instructions provided by the board, including but not limited to the handling, preservation for testing, or disposal of the carcass.

History: En. Sec. 5, Ch. 429, L. 2015.

81-29-104. Prohibitions. The following actions are prohibited:

(1) importing, transporting, or possessing live feral swine;

(2) intentionally, knowingly, or negligently allowing swine to live in a feral state;

(3) except as provided in 81-29-102 and 81-29-103, hunting, trapping, or killing a feral swine or assisting in hunting, trapping, or killing a feral swine;

(4) intentionally feeding a feral swine;

(5) expanding the range of a feral swine; and

(6) profiting from the release, hunting, trapping, or killing of a feral swine.

History: En. Sec. 4, Ch. 429, L. 2015.

81-29-105. Penalties for violations. A person violating the provisions of 81-29-104 is subject to:

(1) a fine of at least $2,000 but not more than $10,000 for each violation; and

(2) repayment of costs incurred by a state or federal agency for the control or eradication of a feral swine as a result of the person's violation.

History: En. Sec. 6, Ch. 429, L. 2015.

81-29-106. Authority — costs — rulemaking. (1) The board is authorized to control and eradicate feral swine and may establish rules to implement the reporting requirements of 81-29-103.

(2) The cost of enforcement actions under this part must be paid from the general fund if the cost to the department exceeds $1,000 and federal funds are not available to pay the excess costs.

History: En. Sec. 3, Ch. 429, L. 2015.

CHAPTER 30
PROTECTION OF FARM ANIMALS AND RESEARCH FACILITIES

Part 1 — Farm Animal and Research Facility Protection Act

81-30-101. Short title.
81-30-102. Definitions.
81-30-103. Unlawful acts.
81-30-104. Action for damage.
81-30-105. Penalty.

Part 1
Farm Animal and Research Facility Protection Act

81-30-101. Short title. This chapter may be cited as the "Farm Animal and Research Facilities Protection Act".

History: En. Sec. 1, Ch. 205, L. 1991.

81-30-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Animal" means any warmblooded or coldblooded animal lawfully confined for food, fur, or fiber production, agriculture and its related activities, research, testing, or education. The term includes but is not limited to dogs, cats, poultry, fish, and invertebrates.

(2) "Animal facility" includes a vehicle, building, structure, research facility, or premises where an animal is lawfully kept, handled, housed, exhibited, bred, or offered for sale.

(3) "Consent" means agreement in fact, whether express or apparent.

(4) "Deprive" means to:

(a) withhold an animal or other property from the owner permanently or for such a period of time that a major portion of the value or enjoyment of the animal or property is lost to the owner;

(b) restore the animal or other property only upon payment of reward or other compensation; or

(c) dispose of an animal or other property in a manner that makes recovery of the animal or property by the owner unlikely.

(5) "Effective consent" means consent by the owner or by a person legally authorized to act for the owner. Consent is not effective if it is:

(a) induced by force or threat;

(b) given by a person that the offender knows is not legally authorized to act for the owner; or

(c) given by a person who by reason of youth, mental disease or disorder, or being under the influence of drugs or alcohol is known by the offender to be unable to make reasonable decisions.

(6) "Notice" means:

(a) oral or written communication by the owner or someone with apparent authority to act for the owner;

(b) fencing or other enclosure obviously designed to exclude intruders or to contain animals; or

(c) a sign or signs posted on the property or at the entrance to a building that are reasonably likely to come to the attention of intruders and that indicate that entry is forbidden.

(7) "Owner" means a person who has:

(a) title to the property; or

(b) lawful possession of the property.

(8) "Person" means an individual, state agency, corporation, association, nonprofit corporation, joint-stock company, firm, trust, partnership; two or more persons having a joint or common interest; or some other legal entity.

(9) "Possession" means actual care, custody, control, or management.

(10) "Research facility" means a place, laboratory, institution, medical care facility, elementary school, high school, college, or university at which a scientific test, experiment, or investigation involving the use of a living animal is lawfully carried out, conducted, or attempted.

History: En. Sec. 2, Ch. 205, L. 1991; amd. Sec. 26, Ch. 161, L. 2015.

81-30-103. Unlawful acts. (1) A person who does not have the effective consent of the owner may not acquire or otherwise exercise control over an animal facility, an animal from an animal facility, or other property from an animal facility with the intent to deprive the owner of the facility, animal, or property or to damage the enterprise conducted at the animal facility.

(2) A person who does not have the effective consent of the owner and who intends to damage the enterprise conducted at an animal facility may not:

(a) damage or destroy an animal facility or an animal or property in or on the premises of an animal facility;

(b) enter an animal facility that is at the time closed to the public with the intent to commit an act prohibited by this chapter;

(c) remain concealed in an animal facility with the intent to commit an act prohibited by this chapter;

(d) enter an animal facility and commit or attempt to commit an act prohibited by this chapter;

(e) enter an animal facility to take pictures by photograph, video camera, or other means with the intent to commit criminal defamation; or

(f) enter or remain on the premises of an animal facility if the person:

(i) had notice that the entry was forbidden; or

(ii) received notice to depart but failed to do so.

(3) The provisions of this chapter do not apply to lawful activities of a:

(a) government agency or its employees who are carrying out their duties under law or to lawful activities of a financial institution or other secured party; and

(b) humane animal treatment shelter or its employees whose primary purpose is the bona fide control or humane care of animals or the enforcement of 45-8-211.

History: En. Sec. 3, Ch. 205, L. 1991.

81-30-104. Action for damage. (1) A person who has been damaged by reason of a violation of 81-30-103 may bring against the person who caused the damage an action in the district court to recover:

(a) an amount equal to three times all actual and consequential damages; and

(b) court costs and reasonable attorney fees.

(2) This chapter may not be construed to affect any other rights of a person who has been damaged by reason of a violation of this chapter. The provisions of subsection (1) may not be construed to limit the exercise of any rights arising out of or relating to a violation of 81-30-103.

History: En. Sec. 4, Ch. 205, L. 1991.

81-30-105. Penalty. (1) A person convicted of violating 81-30-103(2)(f) shall be fined not less than $50 or more than $500 or be imprisoned in the county jail for a term not to exceed 3 months, or both.

(2) A person convicted of an act that violates 81-30-103(1) and (2)(a) through (2)(e) and that results in $500 or less in damage or destruction shall be fined not more than $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) A person convicted of an act that violates 81-30-103(1) and (2)(a) through (2)(e) and that results in more than $500 in damage or destruction shall be fined not more than $50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

History: En. Sec. 5, Ch. 205, L. 1991.